

No. 14911

United States
Court of Appeals

for the Ninth Circuit

BARBARA ARRAMONE, a minor, by and through
her guardians ad litem, DOMINICK N. AR-
RAMONE and MARY I. ARRAMONE,
Appellants,

vs.

JOHN A. PROWSE, as administrator of the Estate
of Alvin Prowse, also known as Alvin I.
Prowse, Deceased, Appellee.

Transcript of Record

Appeal from the United States District Court for the Northern
District of California, Northern Division

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FEB 23 1956

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

STUTSMAN, HACKETT & NAGEL,
T. J. NAGEL,
F. B. HACKETT

1360-L Street,
Fresno 21, California,

Attorneys for the plaintiffs

FITZWILLIAM & MEMERING,
LEO M. FITZWILLIAM

926-Jay Building,
Sacramento 14, California,

Attorneys for the defendants

In the District Court of the United States, Northern
District of California, Northern Division

No. 7007

BARBARA ARRAMONE, a minor, by and through
DOMINICK N. ARRAMONE and MARY I.
ARRAMONE, her guardians ad litem, DOM-
INICK N. ARRAMONE and MARY I. AR-
RAMONE, husband and wife, Plaintiffs,

vs.

JOHN A. PROWSE, as Administrator of the
Estate of ALVIN PROWSE, also known as
ALVIN I. PROWSE, deceased, FIRST DOE,
SECOND DOE and THIRD DOE,
Defendants.

PETITION FOR APPOINTMENT OF GUAR-
DIANS AD LITEM FOR PLAINTIFF TO
INSTITUTE ACTION

To the United States District Court for the North-
ern District of California, Northern Division:

The petition of Barbara Arramone respectfully
shows:

That she is an infant under the age of 21 years
and of the age, to wit, seventeen (17) years; that
she desires to institute an action with this court
against John A. Prowse, administrator of the estate
of Alvin Prowse, also known as Alvin I. Prowse,
deceased, First Doe, Second Doe and Third Doe,
above named defendants, to recover the sum of

One Hundred Fifty Thousand Dollars (\$150,000.00) in damages for personal injuries; that she has no legally appointed guardian and she therefore prays that Dominick N. Arramone and Mary J. Arramone, her father and mother respectively and with whom she resides and has her domicile at 301 North Rutherford Avenue, Chicago, Illinois, may be appointed guardians ad litem for the purpose of instituting the action, they having consented to act.

Dated: This 2nd day of January, 1953.

/s/ BARBARA ARRAMONE,

Petitioner

STUTSMAN, HACKETT & NAGEL

/s/ By J. J. NAGEL,

Attorneys for Petitioner

CONSENT

We, Dominick N. Arramone and Mary J. Arramone, in the above petition named consent and warrant and each of us are willing to serve as the guardians ad litem of the above named petitioner, Barbara Arramone, for the purpose of instituting action against the said John A. Prowse, administrator of the estate of Alvin Prowse, also known as Alvin Prowse, deceased, First Doe, Second Doe and Third Doe.

/s/ DOMINICK NICHOLAS ARRAMONE

/s/ MARY J. ARRAMONE

[Endorsed]: Filed Jan. 14, 1954.

[Title of District Court and Cause.]

ORDER APPOINTING GUARDIANS AD LITEM FOR INFANT PLAINTIFF TO INSTITUTE ACTION

Now on this day the petition of the above named Barbara Arramone for the appointment of Dominick N. Arramone and Mary I. Arramone, as her guardians ad litem for the purpose of instituting suit against John A. Prowse, as administrator of the estate of Alvin Prowse, also known as Alvin I. Prowse, deceased, First Doe, Second Doe and Third Doe, above named defendants, and the written consent of Dominick N. Arramone and Mary I. Arramone being presented to the Court and approved, Dominick N. Arramone and Mary I. Arramone are hereby appointed as guardians ad litem to institute and prosecute the action.

Dated: This 14th day of January, 1954.

/s/ DAL M. LEMMON,
District Judge

[Endorsed]: Filed Jan. 14, 1954.

[Title of District Court and Cause.]

COMPLAINT FOR NEGLIGENCE
AND DAMAGES

For a first cause of action plaintiff, Barbara Arramone, a minor, by her guardians ad litem, Dominick, N. Arramone and Mary I. Arramone, alleges:

I.

That each of the plaintiffs, Barbara Arramone Dominick N. Arramone and Mary I. Arramone, is a citizen of the State of Illinois and each of the defendants, John A. Prowse, as administrator of the estate of Alvin Prowse, also known as Alvin I. Prowse, deceased, First Doe, Second Doe, and Third Doe, is a citizen of the State of California, or is incorporated under the laws of the State of California; that each of the counts or matters in controversy exceeds, exclusive of interest and costs the sum of Three Thousand Dollars (\$3,000.00)

II.

That the true names and capacities whether individual, corporate, partnership, association or otherwise of the defendants sued herein by the fictitious names of First Doe, Second Doe and Third Doe are unknown to plaintiff and plaintiff therefore sues such defendants by such fictitious names and will ask leave to amend this complaint to show their true names and capacities when same have been ascertained together with proper charging allegations.

III.

That the plaintiff, Barbara Arramone, is an infant of the age of (17) seventeen years; that Dominick N. Arramone and Mary I. Arramone are husband and wife and the parents of said plaintiff Barbara Arramone, and were legally appointed guardians ad litem of said minor, Barbara Arramone, by the above entitled court on the 14th day

of January, 1954, for the purpose of prosecuting this action in her behalf.

IV.

That the defendant, John A. Prowse, was appointed administrator of the estate of Alvin Prowse, also known as Alvin I. Prowse, deceased, on the 15th day of October, 1953, pursuant to the order of the Superior Court of the State of California in and for the County of Calaveras in estate proceeding No. 2639 and at all times since has been and now is the duly qualified and acting administrator of the estate of Alvin Prowse, also known as Alvin I. Prowse, deceased.

V.

That on or about the 27th day of August, 1953, while the plaintiff, Barbara Arramone, was riding as a passenger in a certain automobile being driven by Joseph R. Brunkala at the intersection of U.S. Highway 99 at California State Route 88 also known as Waterloo Road, public highways in the County of San Joaquin, State of California, the said Alvin Prowse, also known as Alvin I. Prowse, deceased, did so negligently drive and operate a certain 1950 Dodge pickup truck owned and controlled by him as to cause it to violently collide with the automobile in which said plaintiff, Barbara Arramone, was riding.

VI.

That as a result of the negligence of the said Alvin Prowse, also known as Alvin I. Prowse, de-

ceased, and the aforesaid collision said plaintiff, Barbara Arramone, was thrown in and about the automobile in which she was riding and sustained injuries as follows, to wit: Loss of four teeth, damage to five other teeth of which four may be lost, concussion of the brain, severe multiple laceration of the forehead and face, injury and possible permanent paralysis to facial nerves in the left cheek, abrasion and loss of skin covering on nose, laceration of the left knee, chip fracture of the distal portion of the ulna of the left arm, secondary anemia and shock and injury to brain and nervous system; that plaintiff is informed and believes that said injuries and each of them are of a permanent nature; that plaintiff, Barbara Arramone has therefore been damaged in the sum of One Hundred Fifty Thousand Dollars (\$150,000.00).

VII.

That heretofore and on or about the 22nd day of January, 1954, a verified claim was filed on behalf of the plaintiff, Barbara Arramone, by her guardians ad litem, Dominick N. Arramone and Mary I. Arramone, with the Clerk of the Superior Court of the State of California in and for the County of Calaveras in that certain probate proceeding entitled, "In the Matter of the Estate of Alvin Prowse, also known as Alvin I. Prowse, deceased" proceeding No. 2639; that thereafter and on or about the 1st day of February, 1954, the said defendant, John Prowse, as administrator of the estate of Alvin Prowse, also known as Alvin

Prowse, deceased, filed a rejection of plaintiff's claim in aforesaid estate proceedings.

VIII.

That plaintiff's claim herein sued upon is one that survives the death of a tortfeasor under the law of the State of California.

For a Second, Separate and Distinct Cause of Action Plaintiffs, Dominick N. Arramone and Mary E. Arramone, allege:

I.

That plaintiffs by reference incorporate paragraphs I, II, III, IV, V and VI of the First Cause of Action of plaintiff, Barbara Arramone, as though again fully set forth herein.

II.

That as a result of the negligence of the said Alvin Prowse, also known as Alvin I. Prowse, deceased, and the collision and injuries sustained by the plaintiff, Barbara Arramone, as aforesaid it has been necessary for these plaintiffs to expend to date the sum of Five Hundred Twenty-Five Dollars (\$525.00) for doctor's services, hospital services, dental services, ambulance, drugs, X-rays and allied expenses; that your affiants are informed and believe and therefore allege that it will be necessary for them to expend in the future further sums as and for medical services, hospital services, dental services, X-rays, drugs and other allied expenses to be rendered to the said Barbara Arramone in

the amount of Fourteen Thousand Four Hundred Seventy-Five Dollars (\$14,475.00); that these plaintiffs will thereby be damaged in the total sum of Fifteen Thousand Dollars (\$15,000.00).

III.

That heretofore and on or about the 22nd day of January, 1954, a verified claim was filed by the plaintiffs, Dominick N. Arramone and Mary I. Arramone, with the Clerk of the Superior Court of the State of California, in and for the County of Calaveras in that certain probate proceeding entitled, "In the Matter of the Estate of Alvin Prowse, also known as Alvin I. Prowse, deceased" proceeding No. 2639; that thereafter and on or about the 1st day of February, 1954, the said defendant, John Prowse, as administrator of the estate of Alvin Prowse, also known as Alvin I. Prowse, deceased, filed a rejection of plaintiff's claim in aforesaid estate proceedings.

IV.

That plaintiffs' claim herein sued upon is one that survives the death of a tortfeasor under the law of the State of California.

Wherefore, plaintiffs demand judgment against the defendants and each of them as follows:

1. That plaintiff, Barbara Arramone, have judgment in the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) on the first cause of action.
2. That plaintiffs, Dominick N. Arramone and

Mary I. Arramone, have judgment in the sum of Fifteen Thousand Dollars (\$15,000.00) on the second cause of action.

3. That plaintiffs have their costs of suit.

/s/ DOMINICK N. ARRAMONE,

/s/ MARY I. ARRAMONE,

Plaintiffs

STUTSMAN, HACKETT & NAGEL

/s/ By J. J. NAGEL,

Attorneys for Plaintiffs

[Endorsed]: Filed March 17, 1954.

Title of District Court and Cause.]

ANSWER

Comes now defendant John A. Prowse, as administrator of the estate of Alvin Prowse, also known as Alvin I. Prowse, deceased, and answering plaintiffs' complaint on file herein, admits, denies and alleges:

Answering the First Cause of Action:

I.

Admits the allegations contained in paragraphs IV and VII and answering Paragraph I, further admits that he is a citizen of the State of California, but concerning the remaining allegations in paragraph I contained, this answering defendant alleges that he does not have sufficient information

or belief upon or concerning said remaining allegations to enable him to answer said remaining allegations and for that reason and upon that ground denies each and all and every said remaining allegations.

II.

Answering paragraphs II, III, V, VI and VII this answering defendant alleges that he does not have sufficient information or belief upon or concerning the allegations in said paragraphs contained to enable him to answer said allegations and for that reason and upon that ground, denies each and all and every the allegations contained in said paragraphs and denies that plaintiffs or any of them were damaged in any sum whatsoever.

Answering the Second Cause of Action:

I.

Answering paragraph I, repeats and realleges each and all and every the allegations in answer to those allegations set forth in plaintiffs' first cause of action hereby referring to same and by such reference making the same a part hereof with the same force and effect as if the same were here pleaded in detail.

II.

Admits the allegations contained in paragraph III.

III.

Answering paragraphs II and IV, this answering defendant alleges that he does not have sufficient information or belief upon or concerning the all

gations in said paragraphs contained to enable him to answer said allegations and for that reason and upon that ground denies each and all and every the allegations contained in said paragraphs and denies that the plaintiffs or any of them have been damaged in any sum whatsoever.

Wherefore, this answering defendant prays that plaintiffs take nothing by their complaint and that this answering defendant be hence dismissed with his costs herein incurred.

McDOUGALL & FITZWILLIAM,
/s/ By LEO M. FITZWILLIAM,
Attorneys for said Defendant

Affidavit of Service by Mail attached.

Duly Verified.

[Endorsed]: Filed April 27, 1954.

[Title of District Court and Cause.]

VERDICT FOR PLAINTIFF

We, the Jury, find in favor of the Plaintiff, Barbara Arramone, and assess the damages against the Defendant in the sum of Six Thousand (\$6,000.00) Dollars.

/s/ HAROLD GARFIELD,
Foreman

[Endorsed]: Filed April 8, 1955.

[Title of District Court and Cause.]

VERDICT FOR PLAINTIFF

We, the Jury, find in favor of the Plaintiff Dominick N. Arramone and Mary I. Arramon and assess the damages against the Defendant in the sum of Four Thousand (\$4,000.00) Dollars.

/s/ HAROLD GARFIELD,
Foreman

[Endorsed]: Filed April 8, 1955.

[Title of District Court and Cause.]

JUDGMENT ON VERDICT

This cause having come on regularly for trial on April 4th, 1955, before the Court and a Jury of twelve persons duly impaneled and sworn to try the issues joined herein; Gerald W. Stutsman, Esq. and J. J. Nagel, Esq., appearing as attorneys for the plaintiffs, and Leo M. Fitzwilliam, Esq., appearing as attorney for the defendants, and the trial having been proceeded with on the 5th, 6th, 7th and 8th days of April in said year, and oral and documentary evidence on behalf of the respective parties having been introduced and closed, and the cause, after arguments by the attorneys and the instructions of the Court, having been submitted to the Jury, and the Jury having subsequently rendered the following verdicts, which were ordered recorded, viz:

“We, the Jury, find in favor of the Plaintiff Barbara Arramone and assess the damages against the Defendant in the sum of Six Thousand (\$6,000) Dollars.

Harold Garfield, Foreman.”

“We, the Jury, find in favor of the plaintiffs Dominick N. Arramone and Mary I. Arramone and assess the damages against the Defendant in the sum of Four Thousand (\$4,000.00) Dollars.

Harold Garfield, Foreman.”

and the Court having ordered that judgment be entered herein in accordance with said verdicts and for costs;

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that said plaintiffs do have and recover of and from said defendants the sum of Ten Thousand (\$10,000.00) Dollars, together with their costs herein expended taxed at \$304.99.

Dated: April 13th, 1955.

C. W. CALBREATH,
Clerk

/s/ By C. C. EVENSEN,
Deputy Clerk

[Endorsed]: Filed and Entered April 13, 1955.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR NEW TRIAL

To John A. Prowse, as administrator of the estate of Alvin Prowse, also known as Alvin Prowse, deceased, and to his attorneys, Fitzwilliam & Memering:

You, and each of you, will please take notice that on Monday, the 23rd day of May, 1955, at the courtroom of the United States District Court for the Northern District of California, Northern Division, in the Post Office Building, in the City of Sacramento, County of Sacramento, State of California, at the hour of 10:00 o'clock a.m., plaintiff will move the court to set aside the verdict and grant to plaintiffs a new trial on the following grounds:

1. That the verdict was against the weight of the evidence.

2. That inadequate damages were awarded to plaintiff, Barbara Arramone, a minor, by and through Dominick N. Arramone and Mary I. Arramone, her guardians ad litem.

Said motion will be based upon this notice, upon all of the files, papers, pleadings and proceedings herein, upon the minutes of the court, and affidavits to be filed.

Dated this 14th day of April, 1955.

STUTSMAN, HACKETT & NAGEL

/s/ By J. J. NAGEL,

Attorneys for Plaintiffs

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 16, 1955.

In the United States District Court for the Northern
District of California, Northern Division

Civil No. 7007

BARBARA ARRAMONE, a minor, etc., et al.,
Plaintiffs,

vs.

JOHN A. PROWSE, etc., et al., Defendants.

ORDER DENYING PLAINTIFFS' MOTION
FOR A NEW TRIAL

The matter of plaintiffs' motion for a new trial in the above entitled action came on regularly for hearing on the 23rd day of May, 1955. All parties appeared through their respective counsel, the matter was argued, and thereafter it was submitted to the Court for its decision and determination. The Court having considered said motion and the authorities applicable thereto and good cause appearing therefor:

It is hereby ordered, adjudged and decreed that plaintiffs' motion to set aside the verdict of the jury and grant plaintiffs a new trial in the above entitled action be, and the same is hereby denied.

Dated: July 12, 1955.

/s/ SHERRILL HALBERT,

United States District Judge

[Endorsed]: Filed July 12, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Barbara Arramone, a minor, by and through her guardians ad litem Dominick N. Arramone and Mary I. Arramone, one of the above named plaintiffs, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order Denying plaintiff's Motion for a New Trial entered in this action on the 12th day of July, 1955.

STUTSMAN, HACKETT & NAGEL

/s/ By J. J. NAGEL,

Attorneys for Appellant Barbara
Arramone

[Endorsed]: Filed Aug. 10, 1955.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

We, the undersigned, jointly and severally acknowledge that we, the undersigned and our personal representatives or corporate successors, are bound to pay to John A. Prowse, as administrator of the Estate of Alvin Prowse, also known as Alvin I. Prowse, deceased, the sum of Two Hundred and Fifty Dollars (\$250.00).

The condition of this bond is that, whereas the plaintiff Barbara Arramone has appealed to the Court of Appeals for the Ninth Circuit by notice

of appeal filed Aug. 9, 1955 from the Order of this Court entered July 12, 1955, denying Plaintiff's Motion for a New Trial, if the plaintiff shall pay all costs adjudged against her if the appeal is dismissed or the order affirmed or such costs as the Appellate Court may award if the order be reversed, then this bond to be void, but if the plaintiff fails to perform this condition, payment of the amount of this bond shall be due forthwith.

BARBARA ARRAMONE,
Plaintiff

/s/ By J. J. NAGEL,
One of the Attorneys for the
Plaintiff, Barbara Arramone

Seal] /s/ J. J. NAGEL,
Surety, One of the Attorneys for the
Plaintiff, Barbara Arramone

Seal] HARTFORD ACCIDENT AND
INDEMNITY COMPANY,

/s/ By R. W. RICHTER,
Surety, Attorney-in-Fact.

Notary Public's Certificates attached.

[Endorsed]: Filed Aug. 10, 1955.

Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Pursuant to rule 75 (a) of the Federal Rules of Civil Procedure, the Plaintiff, Appellant Barbara

Arramone, a minor by and through her Guardian ad Litem Dominick N. Arramone and Mary I. Arramone hereby designates for inclusion in the record of appeal to the United States Court of Appeals for the Ninth Circuit taken by notice of appeal filed August 9, 1955, the following portions of the record, proceedings and evidence in this action:

1. Petition of Barbara Arramone, for appointment of Guardians ad Litem, for Plaintiff to institute action.

2. Order Appointing Guardians ad Litem, for Infant Plaintiff to institute action.

3. The Complaint.

4. The Answer.

5. The entire transcript of the testimony of the plaintiff Barbara Arramone, and the entire transcript of the testimony of Mary I. Arramone, witness and one of the Guardians ad Litem of the Plaintiff Barbara Arramone, the entire portion of the testimony of the witness Walter Bromberg, M.D., the entire testimony of the witness Wesley Evans, M.D., pertaining to plaintiff Barbara Arramone, the entire portion of the testimony, by way of deposition, of the witness Paul W. Greeley, M.D., the entire portion of the testimony, by way of deposition, of the witness Warren R. Johnson, D.D.S., the entire portion of the testimony, by way of deposition, of the witness Charles J. Smalley, M.D., relating to the plaintiff Barbara Arramone, and the entire portion of the testimony of the witness, H. V. Petzold, M.D.

6. All photographic exhibits relating to the injuries of the plaintiff, Appellant Barbara Arramone.

mone, being plaintiff's exhibits Nos. 21, 22, 23, 24 and 25, and the hospital records relating to Barbara Arramone, being plaintiff's exhibit No. 11.

7. Verdict of the Jury in favor of the Plaintiff, Barbara Arramone.

8. Judgment in favor of the plaintiff Barbara Arramone.

9. Notice of Motion of new trial entered in behalf of Barbara Arramone, Plaintiff and Appellant.

10. Order Denying Plaintiff's Motion for New Trial.

11. Notice of Appeal.

12. Statement of Points on Appeal.

13. This Document.

14. Journal Entries.

STUTSMAN, HACKETT & NAGEL

/s/ By J. J. NAGEL,

Attorneys for plaintiff, appellant

Barbara Arramone

Affidavit of Service by Mail attached.

[Endorsed]: Filed Sept. 12, 1955.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

Pursuant to rule 75 (d) of the Federal Rules of Civil Procedure, the Plaintiff-Appellant Barbara Arramone, a minor, by and through her Guardians ad Litem, Dominick N. Arramone and Mary I. Arramone, presents the points upon which appellant will rely on appeal.

1. That the damages awarded Plaintiff-Appellant Barbara Arramone by the jury are inadequate.

2. That the Court erred in refusing to grant a new trial on the ground that the damages awarded plaintiff-appellant Barbara Arramone were inadequate as a matter of law.

STUTSMAN, HACKETT & NAGEL

/s/ By J. J. NAGEL,

Attorneys for Plaintiff-Appellant
Barbara Arramone

[Endorsed]: Filed Sept. 12, 1955.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET
APPEAL

It is hereby ordered that the time within which to docket the appeal herein in the United States Court of Appeals for the Ninth Circuit be and the same is hereby extended to and including the 19th day of October, 1955.

Dated: September 17th, 1955.

/s/ SHERRILL HALBERT,

United States District Judge

[Endorsed]: Filed Sept. 17, 1955.

Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents listed below, are the originals filed in this court, in the above entitled case, and that they constitute the record on appeal herein as designated by the plaintiffs herein.

Petition for appointment of guardian ad litem.

Order appointing guardians ad litem.

Complaint.

Answer.

Verdict (in favor of Barbara Arramone).

Verdict (in favor of Dominick N. Arramone).

Judgment on verdicts.

Notice of motion for a new trial.

Order denying plaintiffs' motion for a new trial.

Notice of appeal.

Bond for costs on appeal.

Designation of contents of record on appeal.

Statement of points on appeal.

Order extending time to docket appeal.

Plaintiff's exhibits 11, 21, 22, 23, 24 and 25.

In witness whereof, I have hereunto set my hand and the seal of said Court this 18th day of October, 1955.

Seal]

C. C. CALBREATH,

Clerk

/s/ By C. C. EVENSEN,

Deputy Clerk

[Title of District Court and Cause.]

SUPPLEMENTAL CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the District of the United States for the Northern District of California, do hereby certify that the accompanying Reporter's Transcript is the original filed in this case, in this Court and constitutes the Supplemental Record on Appeal.

Dated: December 7th, 1955.

[Seal] C. W. CALBREATH,
 Clerk
 /s/ By C. C. EVENSEN,
 Deputy Clerk.

In the United States District Court in the Northern
District of California, Northern Division

No. 7007

BARBARA ARRAMONE, a minor, etc., et al.,
 Plaintiffs,

vs.

JOHN A. PROWSE, as administrator, etc., et al.,
 Defendants.

TRANSCRIPT OF PROCEEDINGS

April 5, 6 and 7, 1955

Before Hon. Sherrill Halbert, Judge.

Appearances: For the Plaintiffs: Stutsman, Hackett & Nagel, by Gerald W. Stutsman, Esq., and J. J.

angel, Esq., 1360 L Street, Fresno, 21, California.
for the Defendants: Fitzwilliam & Memering, by
o M. Fitzwilliam, Esq., 926 J Street Building,
eramento, California. [1*]

DR. WESLEY H. EVANS

lled as a witness on behalf of the Plaintiffs,
orn.

Direct Examination

y Mr. Stutsman:

Q. Doctor Evans, what is your full name?

A. Wesley Henry Evans.

Q. Where do you reside?

A. In Stockton, California.

Q. And are you a duly licensed and practicing
ysician and surgeon in the State of California?

A. Yes, I am.

Q. And where is your office located, Doctor?

A. At the San Joaquin General Hospital in
ockton.

Q. Doctor, would you please relate the schools
u attended and the training you had prior to
coming a doctor of medicine?

A. I attended medical school at the University
Utah at Salt Lake City, Utah, and then interned
the San Joaquin General Hospital in Stockton,
and then I proceeded to go into a surgical residency
the San Joaquin General Hospital.

Q. After you interned at the San Joaquin Gen-

* Page numbers appearing at top of page of original Reporter's
manuscript of Record.

(Testimony of Dr. Wesley H. Evans.)

eral Hospital you obtained your license as a physician and surgeon, is that right? [2]

A. Yes,—I actually received it before I completed my internship.

Q. And then you stayed for special training in surgery? A. Yes, I did.

Q. Are you a resident of that hospital at the present time? A. Yes, I am.

Q. And were you on August 27, 1953?

A. Yes, I was.

Q. Doctor, do you specialize in any branch of medicine? A. In general surgery.

Q. And to what medical societies do you belong?

A. I am a Junior member of the San Joaquin County Medical Society.

Q. And you practice in this hospital, that is the hospital where you do your practicing?

A. Yes.

Q. Now, in the practice of your profession did you have occasion to examine and treat Barbara Arramone? A. Yes, I did.

Q. And where did you first see her, Doctor?

A. I saw her on the surgical ward at the San Joaquin General Hospital?

Q. And on what date was that?

A. That was on August 28, 1953.

Q. At what time of day?

A. It was approximately nine o'clock a.m. [3]

Q. Now, did you obtain a history relative to her condition at that time?

(Testimony of Dr. Wesley H. Evans.)

A. I went over the records in her chart which had been made up prior to that.

Q. And would you relate, doctor, what history you obtained relative to her condition at that time?

A. She had been admitted to the hospital the afternoon before and that evening had been taken to surgery where multiple lacerations had been required. At the time I saw her she was conscious and I did take a very superficial examination of her.

Q. A physical examination?

A. That is right.

Q. And, doctor, will you relate to us your findings of this examination made of her?

A. At the time I saw her she had these multiple lacerations of her face. The most severe laceration was one which extended from the corner of her mouth up to the left side of her face to a point about two inches below the eye. There was also severe lacerations of the lower lip, which extended from the chin up through the lip just to the left of the midline.

She also had a sort of an evulsion injury of the ridge of the nose and minor lacerations of the eyelids on both sides.

She also had one minor laceration of the right cheek. [4]

Q. Did you examine her teeth, Doctor?

A. Not conclusively, just very superficial.

Q. What did your superficial examination reveal as to the condition of her teeth?

(Testimony of Dr. Wesley H. Evans.)

A. Referring to the records, the note was made that there were two teeth missing that had been knocked out and there was one that had been chipped.

Q. Doctor, when you saw her she had already been in surgery, you testified?

A. That is right.

Q. And she undergone—

Mr. Fitzwilliam: Pardon me, I don't like to interrupt, but I am not sure that I heard that.

Mr. Stutsman: She had already undergone surgery.

Mr. Fitzwilliam: Oh, I am sorry, I didn't hear that.

Mr. Stutsman: In other words, doctor, she had multiple sutures, is that right?

A. Yes, that is right.

Q. Were there any other findings relative to any physical condition that you noted at that time?

A. She also had a superficial laceration of the left knee, which had also been sutured, and also had some superficial abrasions and contusions about the chest.

Q. Doctor, at that time did you have any opinion as to whether she was uncomfortable or in pain? Could you make any determination [5] of any finding in that regard?

A. She had been receiving some hypos. There was some pain.

Q. Now, doctor, coming back to the more serious

Testimony of Dr. Wesley H. Evans.)

acerations you noted, from the corner of the mouth
o about two inches below the ear, you stated?

A. Two inches below and about an inch lateral
o the corner of the eye.

Q. How long was that laceration?

A. Approximately four to four and a half inches.

Q. And relative to the cheek, how deep was that,
Doctor?

A. Referring again to the note, it was noted
that the laceration was completely through the
cheek at the lower end of the laceration.

Q. Now, in repairing that, how is that repaired
urgically, Doctor?

A. Again referring to the operative note, which
was made by another doctor, the membrane inside
the mouth was sutured separately and then there
were sutures placed in the muscle and the skin
was closed with a subcutaneous wire.

Q. Now, Doctor, you examined and saw the area
of the cut in the face, did you not?

A. Yes, I did.

Q. In that particular laceration, in your opin-
ion did that laceration sever nerves in the face?

A. Yes, it would. There would be a branch of
the 7th nerve which would have to sever. [6]

Q. And also were the muscles severed in that
area?

A. Yes, there was some muscles severed. They
would have to be.

Q. Did your findings reveal that, Doctor?

(Testimony of Dr. Wesley H. Evans.)

A. At the time I saw her she did have a weakness of the left side of the face, yes.

Q. And relative to the one in the lower lip down to the chin, will you describe that and how that was repaired?

A. That laceration also was completely through the lip. It was repaired by approximating the membrane on the inside with separate catgut sutures and the muscles were approximated with catgut sutures, and the skin was approximated with silk sutures.

Q. Now, relative to the bridge of the nose, you say there was evulsion of the flesh, or how was that?

A. Yes, there was an evulsion of skin. In other words, a loss of skin in that area.

Q. How deep was that, doctor?

A. Just through the skin.

Q. Through the skin, you mean the dermis, is that medically what you call it?

A. Dermis and epidermis, yes.

Q. Were both those layers gone?

A. Over a small area, yes.

Q. How does nature heal an injury like that Doctor? [7]

A. It does it by scarring. It has to send in fibrous tissue to cover the area.

Q. Was any repairing done of that in the hospital? A. No, there wasn't.

Q. How about the other lacerations, were there any other surgical repairs on those?

Testimony of Dr. Wesley H. Evans.)

A. Yes, the other lacerations were simply closed with silk sutures.

Q. Do you have any notes as to how many sutures the various lacerations required?

A. No, not the exact number.

Q. Do you have any estimate of the number? Were they extensive or——

A. The lacerations above the eyes, one was approximately $1\frac{1}{2}$ inches, the other approximately 1 inch, and I think the laceration of the right cheek was approximately $1\frac{1}{2}$ to 2 inches.

Q. And do you know the depth of those lacerations, Doctor?

A. They were described on the chart as being superficial. In other words, just through the skin.

Q. Doctor, you might say that Barbara Arranone was brought to your hospital more as an emergency case, is that right, Doctor?

A. Yes, sir, that is right.

Q. And how long was she in your hospital?

A. She was admitted on August 28th and discharged on— [8] let's see—September 23rd—correction: She was admitted August 27th and dismissed on September 3.

Q. Do you know where she went when she left the hospital?

A. She left by ambulance. I understood she was going to Fresno to a private doctor's care in Fresno.

Q. Now, did your treatment and care go beyond the emergency treatment, Doctor?

A. Not on this particular case.

(Testimony of Dr. Wesley H. Evans.)

Q. And you took no corrective surgery like plastic surgery, or anything like that?

A. No, we did not.

Q. What was her general condition, doctor when she left for Fresno in the ambulance?

A. It was satisfactory for transfer.

Q. Did you make any study or investigation to determine whether there was any brain damage by electro-cardiographs or anything like that, Doctor?

A. No; we did a superficial or gross neurological examination, that is all.

Q. What did that reveal, Doctor?

A. The neurological examination we did was negative.

Q. Relative to the effect of the cutting of the nerve of the face, did you have any findings in that regard?

A. There was a weakness, as I previously mentioned, of the left side of the face, indicating that that branch of the [9] seventh nerve had been severed.

Q. You haven't seen her since she left the hospital September 2nd?

A. Not until today, sir.

Q. And you have no knowledge as to the course of her condition or her present condition?

A. No, I haven't.

Mr. Stutsman: Thank you, Doctor. That is all I have. Do you have any questions?

Oh, if the Court please, may I ask one more question?

(Testimony of Dr. Wesley H. Evans.)

Mr. Fitzwilliam: Certainly.

Mr. Stutsman: Q. Doctor, do you have the hospital records of the San Joaquin General Hospital?

A. Yes, I do.

Q. And are those kept under your direction here as resident surgeon? A. Yes, they are.

Q. And in fact some of those entries were made by you? A. Some of them are, yes.

Mr. Stutsman: If the Court please, we would like to introduce Barbara Arramone's hospital records at this time, and, counsel, may photostatic copies be later substituted for the originals?

Mr. Fitzwilliam: I have no objection.

The Court: Let these documents be received and marked [10] Plaintiff's Exhibit 11 for the Plaintiff Barbara Arramone—well, I assume that that so is applicable to Mr. and Mrs. Arramone, who are plaintiffs in that action?

Mr. Stutsman: Yes.

The Court: They will be marked Plaintiffs' Exhibit 11 for the Arramones.

Mr. Stutsman: Yes, your Honor.

(The hospital records referred to were marked Plaintiffs' Exhibit No. 11 for the Arramones, and received in evidence.)

The Court: It does not concern the Brunkala case.

Mr. Stutsman: Yes, your Honor.

Q. Doctor, just one point for clarification: Now which knee was that that you found was injured?

A. The left knee.

(Testimony of Dr. Wesley H. Evans.)

Mr. Stutsman: Thank you.

(Examination by Mr. Pacht omitted from this transcript.)

Cross Examination

By Mr. Fitzwilliam:

Mr. Fitzwilliam: If your Honor please I would like to have just a moment to look these records over here. I have never seen them before.

The Court: All right.

Q. Doctor, maybe you could help me. Do the records read backwards here?

A. Yes, they do. They start at the back. They are the [11] nurses' notes.

Q. Oh, I see. Oh, all right. Fine, thank you.

Doctor, were there any X-rays taken of Mr. Arramone? A. No, there wasn't.

Q. All right. Was there any complaint at any time about the right wrist?

A. Not that I could recall, no.

Q. And just so I am sure, is it the right wrist that was——

The Court: Mr. Fitzwilliam, I can't hear you and I am sure the reporter can't.

Mr. Fitzwilliam: Oh, I am sorry, I was just asking counsel?

Q. Was there any complaint about the left wrist, Doctor?

A. Not that I can recall.

Q. Now when these lacerations were sutured was done under sedation, wasn't it?

estimony of Dr. Wesley H. Evans.)

A. Yes, it was, apparently, according to the records. I wasn't there at the time.

Q. That was in an effort to relieve the patient's comfort?
A. Yes.

Q. All right. And then by the 30th, I notice here, August 30th, the statement is made, "Ate well, right; cheerful and cooperative," is that right?

A. Yes.

Q. That would indicate to you, "cheerful and cooperative," [12] and so forth, that at that time the patient apparently was resting comfortably, wouldn't it?

A. Fairly well; that she was progressing satisfactorily, yes.

Q. And then here, "discharged"—what date is this, Doctor, September 2nd?

A. That would be September 2nd.

Q. All right. "Patient offers no complaint, reading most of the time, visitors." As a doctor that would indicate to you that on September 2nd Barbara Arramone apparently was relaxed, wouldn't she, and quite comfortable?

A. Yes, she was quite comfortable.

Q. Yes, all right. And I think you have described as superficial the lacerations that existed, exclusive of the one of the left cheek and the chin, and the nose, that is what you call evulsion?

A. That is correct.

Q. All right. And you say that was an evulsion of the skin, and I think you made some statement that nature does something to that?

(Testimony of Dr. Wesley H. Evans.)

A. Yes, to the healing, it tends to heal it scarring, and also the epithelium of the skin tends to close over.

Q. And I presume, Doctor, that at the time she left the hospital six days or perhaps seven days later that healing of these lacerations was in good progress? A. Yes, it was. [13]

Q. Now the laceration of the knee you have described as superficial, which means on the surface doesn't it, more or less?

A. I mean by superficial a laceration which completely goes through the skin but does not involve deep structures, such as muscles and nerves and so forth.

Q. All right. And from your observation of the wound from the stitching that was done there, it appeared to be well closed and was healed? At least well along the progress of healing when she left the hospital?

A. Yes, at the time.

Q. All right. And you saw no reason to be concerned about any involvement of any bones?

A. No, I did not.

Q. And there were no complaints or no symptoms that indicated to you the necessity of an X-rays, or any possible bone pathology?

A. None at that time, no.

Q. All right. Now you told us that you made a superficial neurological examination, is that correct? A. That is correct.

Q. All right. And that you were of the opinion that there had been a damage or perhaps a severe

(Testimony of Dr. Wesley H. Evans.)

Q. In the examination of the seventh nerve on the left side of the face?

A. Of a branch of the seventh nerve.

Q. Of a branch? *

A. Yes, that is right.

Q. All right. Now this neurological examination is done by making certain tests to determine the activity of the nervous system—I put that rather badly—but is it something along those lines?

A. Yes, that is right.

Q. All right. And there weren't any complaints, were there, Doctor, that led you to believe that there had been any particular brain damage as far as Barbara Arramone was concerned?

A. No, there had not.

Q. In other words, the records and her history here, especially in the last few days, would denote the absence of any headaches or any severe headaches?

A. Would you state that, again.

Q. I say the hospital record as it relates to her condition for the last few days there denotes the absence, doesn't it, of headaches?

A. Yes, I think it does.

Q. All right. So you had no concern in dismissing her some week later that there was any particular brain damage?

A. No, not at that time. I thought she was in good enough condition to be transferred.

Q. And when we talk about cerebral concussions, as to any [15] of the plaintiffs or anybody, they are diagnosed, aren't they, simply from a history of unconsciousness?

(Testimony of Dr. Wesley H. Evans.)

A. More from a history than from actual findings, yes.

Q. Well, every time a prizefighter gets knocked out he has a cerebral concussion, doesn't he?

A. Yes, to a certain degree.

Q. So that is the basis of a diagnosis, then, of a concussion, isn't it? A. Yes, it is.

Q. It is a history of a period of unconsciousness. Were the sutures removed before she left the hospital? A. Yes, they were.

Q. They were all taken out by that time, and so we don't have any mistake on that, sutures and stitches are the same thing, right?

A. That is right.

Q. All right. Now, as far as Mrs. Brunkala is concerned—if I may have just one minute again, your Honor, I have no purpose of trying to keep the doctor over, and I assure you I won't prolong it.

(Cross examination relating to other plaintiffs omitted from this transcript.)

Redirect Examination

By Mr. Stutsman:

Q. Doctor, relative to these, what you call superficial [17] lacerations, I believe you said you call them superficial because it doesn't go into the deep structures, is that right? A. That is right.

Q. And in between the dermis and epidermis, before you get to the deep structures like muscles or nerves is a layer of fat?

(Testimony of Dr. Wesley H. Evans.)

A. Yes, what you call subcutaneous tissue.

Q. So the lacerations could go to that area and still not be into the deep structures, is that right?

A. That is right.

Q. Doctor, relative to the cosmetic deformity on the face lacerated, the scar forms in the epidermis and subcutaneous tissues, is that right?

A. That is right.

Mr. Fitzwilliam: Your Honor, I don't like to interrupt, but these questions are extremely leading.

Mr. Stutsman: I was doing that because the scientific——

Mr. Fitzwilliam: Very well.

The Court: I think they are leading.

Mr. Stutsman: Very well.

Q. Doctor, where does the scarring area grow on a laceration of the face, what part of the tissue?

A. It occurs actually in all layers that are injured.

Q. And what can we see when we look at them?

A. Well, we see the external or epidermis portion of the scar.

Q. And can we see the scarring of the deep structures by looking at them externally?

A. Occasionally, if the scar is thick enough it tends to raise the area, and sometimes we can see it.

Q. Doctor, relative to a neurological examination would there be any difficulty in giving a neurological examination in the condition of Barbara Arramone, at the time she was in the hospital?

(Testimony of Dr. Wesley H. Evans.)

A. At the time I saw her I don't think there would be.

Q. Did you give any tests for smell, like clove or anything of that nature?

A. Not that detailed neurological examination I did not do it.

Q. Will you describe just generally what your gross or superficial neurological examination consisted of?

A. That is right. We can check the reflexes and motor sensations and so forth. We didn't go into any detail.

Q. Now doctor, on the notes we have here, on the nurses' records which Mr. Fitzwilliam referred to, we have here—we start August 28th, is that right, is that the first nurse's record.

A. There are a few here under August 27th and that is the 28th. [19]

Q. The 28th. And was there any complaints of headaches during this initial period there?

A. No, there is not.

Q. That was on August 28th?

A. That is right.

Q. August 29th?

The Court: Don't those notes show?

The Witness: I guess they would, yes.

The Court: Unless the Doctor has some independent knowledge not appearing there.

A. No, I do not. I would have to refer to the records.

Testimony of Dr. Wesley H. Evans.)

Mr. Stutsman: Q. Doctor, I notice it says "Surgical liquid diet." What does that mean?

A. That would mean that the food given her was entirely liquid.

Q. Was that during all the time she was there?

A. I don't think so. I would have to refer to the record.

Q. Now, Doctor, you note the record on August 9th at this point, I will ask you to explain this part here, "Patient complains she was hungry, unable to eat on account of her mouth." What prevented her from eating, Doctor, the condition of her mouth?

A. Oh, I think the—especially this one deep laceration of the left cheek would be fairly painful on her attempt to chew. [20]

Q. Would it have any effect upon the function of the muscles?

A. Yes, it would. The lacerations extend into the musculature which one uses in chewing food.

Q. Doctor, getting to the concussion, Mr. Fitzwilliam mentioned about unconsciousness. If a person had a blow on the head and then had amnesia for two or three days after the accident would that be classified as a concussion or not?

A. If there were no organic neurological findings present it would be, yes.

Q. Doctor, I gather from this you made no prognosis regarding her future course, did you?

A. No, I did not.

Mr. Stutsman: Thank you, Doctor.

(Testimony of Dr. Wesley H. Evans.)

(Examination by Mr. Pacht omitted from this transcript.)

(Recross examination by Mr. Fitzwilliam relating to plaintiff Brunkala omitted from the transcript.) [21]

Wednesday, April 6, 1955

MARY ARRAMONE

one of the Plaintiffs called as a witness in her own behalf, sworn.

Direct Examination

By Mr. Nagel:

Q. Mrs. Arramone, would you give us your full name, please? A. Mary Arramone.

Q. And the name of your husband is what?

A. Dominick Arramone.

Q. And are you Barbara Arramone's mother?

A. Yes, I am.

Q. Do you have any other children other than Barbara? A. Yes, I do.

Q. And how many other children do you have?

A. One other daughter.

Q. And she and your husband are back home now, are they? A. How?

Q. She and your husband are home in Chicago, Illinois? A. Yes.

Q. What is that address in Chicago?

A. 3011 North Rutherford Avenue.

Q. Mrs. Arramone, how old was Barbara on August 27, 1953? A. She was 17 years old.

Testimony of Mary Arramone.)

Q. And she is how old today?

A. She is 19 to date.

Q. She was born when?

A. October 20, 1935.

Q. Mrs. Arramone, it has been testified here briefly that Barbara had come to California along with a girl friend and an uncle and aunt as a part of their vacation, and some time during that vacation while traveling from Fresno back home they were involved in an automobile collision. Is that true?

A. Yes.

Q. You were at home, were you, along with your husband and the rest of your family and Barbara was involved in the collision?

A. Yes, I was.

Q. And then did you see Barbara some time after she was involved in this collision?

A. I seen her ten days after.

Q. And at that time had she been transported from the San Joaquin General Hospital in Stockton by ambulance to Fresno?

A. Yes, she was.

Q. And at the time you saw her some ten days after she was involved in this collision she was in what hospital in Fresno?

A. St. Agnes in Fresno.

Q. Mrs. Arramone, did you have, or were pictures taken of Barbara either the first or second, or perhaps the third day [23] after you saw her in Fresno?

(Testimony of Mary Arramone.)

A. Yes, there was one taken at St. Agnes Hospital.

Q. And were there any pictures taken of Barbara some months prior to the time that she was involved in the collision?

A. Yes, there was.

Q. And first of all did you give to me pursuant to my instructions that picture that was taken prior to the collision? A. Yes, I have.

Q. Mrs. Arramone, I show you a photograph and ask you if you recognize the photograph?

A. Yes, that is my daughter Barbara.

Q. And that picture was taken when?

A. That was taken six months before the accident.

Q. At home in Chicago?

A. Yes.

Mr. Nagel: May we, your Honor, introduce the photograph taken six months of Barbara Arramone prior to the collision of plaintiff's exhibit next order.

The Court: Plaintiff's Exhibit 21 for Plaintiff Arramone.

(The photograph referred to was marked Plaintiff Arramone's Exhibit No. 21.)

Mr. Nagel: Q. Mrs. Arramone, I show you another photograph and ask you if you recognize this photograph? A. Yes, I do. [24]

Q. And this photograph was taken, if you know when? A. In St. Agnes Hospital.

(Testimony of Mary Arramone.)

Q. In Fresno. And that was taken approximately how many days after the collision?

A. It was taken two days after——

(Witness weeping.)

Mr. Nagel: Your Honor, may we have this photograph introduced as Plaintiff's Exhibit next in order?

The Court: Plaintiff's Exhibit 22 for the Arramones.

(The photograph referred to was marked Plaintiff Arramone's Exhibit No. 22 in evidence.)

Mr. Nagel: Q. Mrs. Arramone, were there any further and additional pictures taken of Barbara, your daughter, some time after the first photograph was taken in the St. Agnes hospital?

A. Yes.

Q. Was Barbara still in California at that time?

A. Yes.

Q. And were they taken prior to — approximately how long prior to the time that you left for Chicago were they taken?

A. They were taken about a week before I left for Chicago.

Q. In Fresno? A. That is right.

Q. And at whose instructions were they taken?

A. By you, Mr. Nagel. [25]

Q. I show you three further and additional—well, I will show you these three photographs and ask you were those three pictures taken?

A. Yes.

(Testimony of Mary Arramone.)

Q. Approximately a week prior to the time that you left for home, is that correct?

A. Yes.

Q. And while you were still in Fresno?

A. That is right.

The Court: Those three photographs may be marked Plaintiff's Exhibits 23, 24 and 25 respectively for the Plaintiff Arramone.

(The three photographs referred to were marked Plaintiff Arramone Exhibits 23, 24 and 25 respectively, in evidence.)

Mr. Nagel: Your Honor, I would like to ask the Court's permission to, at this time, pass these photographs to the jury.

The Court: Mr. Nagel, I suggest that you wait until later, because there is nothing—or am I wrong? Assuming that they will only be a part of the evidence, there is nothing that you are going to examine further about now on them?

Mr. Nagel: No, your Honor, but it is our belief that in order to understand the change in behavior and the change in the person, that the photographs of what actually did take [26] place are necessary explanations prior to the evidence we hope to introduce.

The Court: All right, you may show them to the jury.

(The photographs were passed to the jury.)

Mr. Nagel: Q. Mrs. Arramone do you know how many days Barbara stayed at the St. Agnes Hospital in Fresno?

(Testimony of Mary Arramone.)

A. Approximately four days.

Q. And then after that she went where?

A. She went to the home of my brother and his wife.

Q. In Fresno? A. That is right.

Q. By the way, when did you finally leave for Chicago? A. The 30th of September.

Q. And you and Barbara went together, did you? A. Yes, we did.

Q. And you went back how?

A. By train.

Q. During the time that Barbara was in the hospital, and during the time she was at your home—at the home of your brother, her uncle, was she attended by any doctors?

A. Yes, she was.

Q. First of all, I will ask you this: Did she see a dentist? A. Yes, she did.

Q. And was that Dr. Pearson?

A. Dr. Pearson.

Q. And did she also see any other doctors? [27]

A. Dr. Wolf and Dr. Wilde.

Q. Dr. Wolf did what for Barbara, if you know?

A. Barbara had a blood count, and she had medication.

Q. Did he attend her in the hospital also?

A. Yes, he did.

Q. As well as home?

A. And blood transfusions.

Q. Now, Mrs. Arramone, when once you arrived

(Testimony of Mary Arramone.)

home, and that is Chicago, Illinois, at the address you have given us, did you take Barbara to a doctor? A. Yes, I did.

Q. And what doctor was that?

A. It was Dr. Smalley.

Q. And for how long has Dr. Smalley been the doctor for Barbara?

A. He has been the doctor all her life.

Q. Was he her doctor at the time she was born?

A. Yes.

Q. And has he been your family doctor?

A. Yes, he has.

Q. And has Barbara had any other doctors other than Dr. Smalley, other than perhaps dentists? A. That the only physician and surgeon that she has seen in all the 17 years prior to the time the collision occurred?

A. Yes, he is the only one. [28]

Q. Now, I will ask you this, Mrs. Arramone, Did Barbara visit Dr. Smalley more than once?

A. Yes, she has.

Q. And I will ask you this, did she see him in the last 30 days? A. Yes.

Q. May I ask you this, for the first six months or thereabouts after she came back home how often did she see Dr. Smalley on an average, how often per week? A. About twice a week.

Mr. Fitzwilliam: I don't know whether I heard that. Will the reporter repeat it?

(Record read by reporter.)

Mr. Nagle: Q. Mrs. Arramone, during the last

Testimony of Mary Arramone.)

Q. Six months prior to the time that you came here for the trial did Barbara see Dr. Smalley?

A. Yes, she has.

Q. On the average how frequently for the last three months, shall we say, how often did Dr. Smalley see her? A. About once a week.

Q. Dr. Smalley's offices are located how far distant from your home?

A. About an hour and a half drive by bus.

Q. Is that the means by which Barbara went to the doctor during those times you have mentioned? [29] A. Yes.

Q. Now did she see a dentist in Chicago also?

A. Yes, she went to our family dentist.

Q. And that is Dr. Johnson? A. Yes.

Q. And did she see Dr. Johnson more than once?

A. Once, twice a week — twice a week in the beginning.

Q. Can you give us an idea of what was done and how frequently she saw Dr. Johnson?

A. Yes.

Q. Now let me ask you this, Mrs. Arramone: Some time after you arrived home did anything unusual happen to—I will withdraw that question. When she arrived home did you know that there was anything wrong with any one of Barbara's wrists or arms?

A. Well, I didn't notice that until one day she went to make some tea, and she picked up a little kettle on the stove and she dropped it. She said, "Mother, my wrist."

(Testimony of Mary Arramone.)

So I said, "The next time we go in to Dr. Smalley's we will have it X-rayed."

Q. What wrist was that?

A. That was her right wrist.

Q. Was there ever a cast applied to that wrist?

A. No. She has worn a leather wrist guard.

Q. Who applied that, do you know? [30]

A. Dr. Smalley.

Q. Now, Mrs. Arramone, I will ask you this: Referring to Plaintiffs' Exhibit No. 22, and that is the photograph that was taken in the St. Agnes Hospital, and shows some suturing or stitching of the right knee, have you, in observing Barbara these past six months or a year noticed whether there was anything different about that right knee or anything unusual or different about the right knee?

A. Well, I noticed it, she complained—she didn't complain until we went to Church, and then I noticed that she couldn't kneel on her knee.

Q. Well, let me ask you this question: Can she now kneel upon the knee?

A. She kneels on it, but she complains of considerable pain.

Q. Did you say that was the left or the right arm? Was there a fracture of the wrist?

A. Yes, there was.

Q. Was it the right or left, do you recall?

A. I think I said the right.

Mr. Fitzwilliam: If your Honor please, I don't know what the medical testimony is going to be but I will ask that that go out.

Testimony of Mary Arramone.)

Mr. Nagel: I have no objection.

The Court: It may go out. It may go out. Let's get the thing straight here: I think in the answer he said that there [31] was a fracture. Everything after that should go out. So start again from there.

Mr. Nagel: No objection, your Honor.

Q. Can you now tell us whether it was the left or the right arm that Barbara had this wrist band on the right arm that Barbara had this wrist band on?

A. I am so confused—I know she wore a wrist band.

Q. But you don't remember which, is that correct? A. I don't remember.

Q. Let me ask you this, Mrs. Arramone: Has Barbara, since she was involved in this collision been capable of doing any of the heavy housework around the home? A. No, she hasn't.

Q. Might we ask you this: After you went back home did Barbara go back to high school?

A. Yes, she did. She went back some time the last of October.

Q. And finished her senior year, is that correct?

A. Yes, she did.

Q. And did she, some time in the year 1954, seek and obtain employment?

A. Yes, she did.

Q. And for whom did she work and in what kind of a job?

A. She worked for the Illinois Bell Telephone Company and she done typing, she was a typist.

(Testimony of Mary Arramone.)

Q. Now, for approximately how long did s work? [32] A. Five and a half months.

Q. And do you know how much she earned during that period of five and a half months?

A. She earned \$1200.00.

Q. Was that gross pay?

A. That was gross.

Q. Do you know of your own knowledge ne why she did not continue her work?

Mr. Fitzwilliam: Well now, if your Hon please, I am afraid that will call for a conclusion of the witness.

The Court: The objection will be sustained.

Mr. Nagel: Your Honor, I would respectfully suggest that it may not call for the opinion a conclusion, if this witness knows.

The Court: Mr. Nagel, I don't see how it humanly possible for this witness to know. would be either what Barbara told her or wh her employer told her. In other words, it would hearsay. In other words, this witness can't see hear for Barbara.

Mr. Nagel: Very well, your Honor, we will u another witness.

The Court: I have no doubt it is admissibl under the proper circumstances, but not from th witness.

Mr. Nagel: Q. Might we ask you this, M Arramone: Did Barbara in working this five a a half months, if she were [33] working stead

(Testimony of Mary Arramone.)

each week how many days a week would she be required to work?

A. She was required to work five days a week.

Q. And on the average how many days did she actually work there?

A. From three to four days a week.

Q. Did you observe Barbara before she went to work at night—before she went to work in the morning and when she came home that evening, when she did go to work? A. Yes.

Q. Mrs. Arramone, will you tell us, prior to the time that Barbara was involved in this collision she was going to high school, is that correct?

A. Yes.

Q. Now, describe for us what her social activities prior to that time that she was involved in this collision were?

A. Barbara had a lot of social activities. She used to go—she loved sports and she done a lot of dancing and skating.

Q. Did she hold any offices in high school?

A. She was captain of her volley ball team.

Q. Did she hold any position in her class other than that?

A. Yes, I think she did. She was a student counsel, and a few others. I don't quite remember.

Q. Now, Mrs. Arramone, after this collision took place would you tell us what, if any, social activities Barbara [34] engaged in?

A. After?

Q. After? A. She didn't, any activity.

(Testimony of Mary Arramone.)

Q. What do you mean by that?

A. She just didn't care for any social life.

Q. Mrs. Arramone, have you ever taken Barbara shopping at home?

A. Yes, I have.

Q. During any one or more of these occasions that you took her shopping did anything unusual occur?

A. Well, once or twice, I think it was twice, a couple of ladies had come up and asked what had happened to Barbara and if she was in an accident and Barbara turned and left me and went home all by herself.

Q. You say this happened twice when you were with her? A. Yes.

Q. Did it ever happen when she was with any one else?

Mr. Fitzwilliam: That would be a conclusion of your Honor. I will have to object on that ground.

The Court: Mrs. Arramone, you understand from what we have been saying here, that you can't tell what someone else told you. Now, do you know this from what you saw yourself, or did someone tell you of some other incident?

A. Now, this is what I know myself. [35]

Q. You saw this yourself? A. Yes.

The Court: You may answer.

Mr. Nagel: Q. Mrs. Arramone, to your own knowledge did this ever happen with Barbara concerning someone else other than yourself, leaving for home?

(Testimony of Mary Arramone.)

A. I am quite sure it did.

Q. Do you know with whom she was upon that occasion?

A. I am sure—Yes.

Q. Who was that person?

A. My sister.

Q. That is Barbara's auntie?

A. Yes.

Q. Well, what happened on that occasion, if you know?

A. Well, she went home also.

Q. Mrs. Arramone, does Barbara ever go to motion pictures, to see motion pictures?

A. Yes, once a week, about, and it is mostly at night.

Q. Have you observed any unusual conduct that occurs with Barbara during the day that is different from her conduct as it was as you observed prior to the time that she was involved in this collision?

A. Well, as much as I am at home—I mean I am employed—I do call her to awaken her, she sleeps late, and sometimes I have to awaken her at my ten o'clock break, or she would sleep [36] on to 2:00 or 3:00 in the afternoon, so I call her by phone. And then I have noticed when I get home that she has the blinds all down, and she loves to sit in the dark.

Q. Can you explain what you mean by that?

A. Well, she pulls down the shades and she puts out the lights. She doesn't like a bright light in her eyes.

Q. Let me ask you this concerning these window

(Testimony of Mary Arramone.)

shades, does she pull down more than one window shade? A. She pulls them all down.

Q. And that is during the day? A. Yes.

Q. Has that happened more than one time?

A. It happens all the time.

Q. Now you have stated that she likes to stay in the dark. What do you mean by that?

A. Well, she will pull down the shades and then at night she will put out the lights and she will sit in a chair all by herself.

Q. Without any lighting, is that correct?

A. She doesn't like the light.

Q. Is that just in the room that she happens to be in or——

A. All over the house, she will go around and put out the lights.

Q. Has that happened more than once?

A. Yes, it happens—— [37]

Q. And for how long has this pulling of shades and turning out of lights taken place?

A. In the beginning I didn't take too much notice, but she has been doing it all the time more and more.

Q. This condition is getting better or worse?

A. To me it is getting worse.

Q. Mrs. Arramone, have you ever watched Barbara while she was sleeping? A. Yes.

Q. Is there any difference that you can observe in one eye as distinguished from another?

A. Well, Barbara has a short eyelid on one eye; the eye doesn't cover completely.

Testimony of Mary Arramone.)

Q. What do you mean by doesn't cover completely?

A. Well, half of the eye is exposed when she closes her eyes and goes to sleep.

Q. You mean the lid doesn't close all the way?

A. That is right.

Q. How much of that lid is it that doesn't close when she sleeps?

A. I haven't measured it, but I would say about fourth of an inch.

Q. Is that still in existence?

A. Yes, it is.

Q. Well, have you observed Barbara, and her eyes particularly, [38] when she gets up in the morning?

A. Well, this eye is generally bloodshot in the morning, and she complains of a burning sensation in it.

Q. Has that situation existed throughout these past 19 months?

A. It has existed ever since the accident.

Q. And it is a situation that exists now?

A. Yes.

Q. Have you noticed any difference in Barbara's sleeping habits or the method and manner in which she sleeps now as distinguished from the way she used to sleep prior to the time she was involved in this collision, Mrs. Arramone?

A. Barbara, yes.

Q. And would you be kind enough to point out

(Testimony of Mary Arramone.)

to us those differences, if you have observed them yourself?

A. Barbara was a sound sleeper, she always was, and of course since the accident she has nightmares and she will wake up during the night and complain of being thirsty, and at first I used to wonder why she used to get up so much. So I got up to answer her and I said "What seems to be the trouble,"——

Q. Mrs. Arramone, you aren't supposed to say what conversation took place, but just tell us what you observed, what you saw. May I ask you this: Did Barbara get up more than once at night?

A. Yes.

Q. Does she still do that?

A. She does. [39]

Q. And how frequently does she get up during the usual normal night now?

A. About twice.

Q. And do you know why that happens?

A. She complains of being thirsty.

Q. Have you observed her condition in the morning?

A. Well, she happens to sleep with her mouth open. She claims she can't breathe.

Q. You have told us that Barbara has nightmares. Does she make any noise that you can hear?

A. She talks quite a bit in her sleep.

Q. Did she ever do this prior to the time that she was hurt?

Testimony of Mary Arramone.)

A. I have never noticed it before.

Q. May I ask you this: Would you tell us this: How does Barbara, in sleeping in the bed—let me ask you this, how many pillows does she use now?

A. Barbara has been using two pillows and she props herself up.

Q. Is that in a half-way sitting position, is that what you mean? A. Yes, sir.

Q. Does she still do that?

A. She still does that.

Q. Do you know why?

A. She complains that she can't breathe through her nose.

Q. What is Barbara's weight, approximately now, do you know? [40] A. 92 pounds.

Q. And what was her normal weight say a week or ten days or thereabouts prior to the time that the collision took place?

A. Between 116 and 117 pounds.

Q. Have you noticed any difference in her appetite now as distinguished from what it was before?

A. She has a very poor appetite.

Q. Have you noticed any difference in—does she tire easily now—or may I withdraw that. Is she able to do any housework without tiring during the day?

A. Barbara don't take no interest in housework.

Q. What does she take an interest in?

A. Not very much of anything.

Q. Mrs. Arramone, have you had an opportunity to observe the difference, if any, there may be or

(Testimony of Mary Arramone.)

may not be in Barbara's memory now and as you observed it these last nineteen months as distinguished from her memory prior to the time that she was injured? A. Her memory?

Q. Yes. A. She is very forgetful.

Q. What has happened to make you make the statement that you just have? What have you observed?

A. She forgets appointments, she forgets to do certain little things that I have left for her to do, she also forgets about [41] everything that I have ever mentioned for her to do.

Q. Do you have to remind her to do the same thing more than once?

A. I have to remind her several times.

Q. Have you noticed——

Mr. Nagel: I am sorry, your Honor, it is 12:00 o'clock.

The Court: Will you be some while, Mr. Nagel?

Mr. Nagel: Yes. We still want to go into the special damages.

The Court: All right, we will take the noon recess at this time. Ladies and gentlemen of the jury we will take a recess until the hour of 1:30, half past one, today, at which time we will return and resume the trial of this case. The jurors will remember the admonition the Court has heretofore given you.

(Thereupon a recess was taken until 1:30 p.m. this date.) [42]

Wednesday, April 6, 1955, 1:30 p.m.

Mary Arramone resumed the stand and testified further as follows:

Direct Examination—(Continued)

The Court: The jurors are all present. You may proceed.

Mr. Nagel: Your Honor, may we have the reporter read the last question and answer?

The Court: You may.

(Record read.)

Mr. Nagel: Q. Mrs. Arramone, did Barbara ever enroll in a college in the past year or so?

A. Yes, sir.

Q. What college?

A. DeKalb College.

Q. Is that D-e-K-a-l-b?

A. That is right.

Q. Do you know what course of study she chose? A. She chose dental technician.

Q. May I ask you this: Did she ever attend any classes at this college?

A. No, she did not.

Q. Did she pay her registration?

A. Yes, she paid a part payment.

Q. Mrs. Arramone, have you observed Barbara in her ordinary [43] walking habits during these past 19 months? A. Yes, I have.

Q. And would you tell us what, if anything you have noticed about her walking habits that was unusual?

A. Well, Barbara walks more to the right.

(Testimony of Mary Arramone.)

Q. What do you mean by that?

A. Well, if we walk on a sidewalk she will verge towards the right with her right foot, and she sort of walks crooked.

Q. Is it a swerving to the right?

A. Yes, it is.

Q. Do you know of your own knowledge whether she is or is not conscious of that swerving to the right?

Mr. Fitzwilliam: Oh, if your Honor please, that calls for a conclusion.

Mr. Nagel: I will withdraw the question.

Q. How long has this been going on to your knowledge, Mrs. Arramone?

A. Well, I have noticed it in the last year more and more.

Q. Mrs. Arramone, do you of your own knowledge, know whether Barbara has had any black-outs in the past 19 months?

A. She has, to my knowledge, had three black-outs.

Q. What happened when this occurred?

A. Well, the first time she got one she fell on the floor. The second time she sort of groped the wall.

Q. What do you mean by that? [44]

A. Well, it seems like she got dizzy and she groped up against the wall. The first time she fell completely on the floor.

Q. Do you know how long that blackout, what-

(Testimony of Mary Arramone.)

ever it was, lasted on this first occasion when she fell?

A. I don't recall. It didn't last very long.

Q. Do you know whether she has had any headaches these last 19 months?

Mr. Fitzwilliam: If your Honor please, that definitely calls for a conclusion.

The Court: The objection will be sustained.

Mr. Nagel: Q. Has she ever complained to you of headaches during these past 19 months?

A. Yes, sir.

Q. Has she complained to you more than once about headaches?

A. She always complains of headaches.

Q. Mrs. Arramone, I will ask you this. First of all, concerning the headaches, have those complaints become more numerous as time goes on? In other words, has there been more complaints about these headaches in the past, say, six months, or have there been a fewer number of complaints?

A. She complains more.

Q. Concerning the nightmares that you have told us about, has that condition grown better in the past six months or worse?

A. It has grown worse. [45]

Q. Mrs. Arramone, I will ask you this: These scars that are on Barbara's face, have you noticed any difference in the appearance of these scars during certain times of the day or certain weather changes?

A. Oh, yes, when it gets cold they get bright

(Testimony of Mary Arramone.)

and especially if she is fatigued toward evening they show more.

Q. What do you mean, have they a different color? A. They are more noticeable.

Mr. Nagel: In the interest of saving time, Mr. Fitzwilliam, I would suggest that perhaps you could stand up here with me and we can go through these bills in chronological order, and introduce them as one exhibit.

Mr. Fitzwilliam: Oh, yes.

Mr. Nagel: Q. Mrs. Arramone, do you know that Barbara went to the San Joaquin General Hospital? A. Yes.

Q. Did you and your husband, Mr. Dominick Arramone, receive a bill from the San Joaquin General Hospital in the amount of \$140.00?

A. That is right.

The Court: May I suggest that you have these bills here perhaps certain of them counsel will be willing to concede be admitted in evidence, without assuming any responsibility.

Mr. Fitzwilliam: That is right, as long as the jury [46] understands the nature of the stipulation.

The Court: That is what I am suggesting. There is a certain amount of legal procedure to go through, and if there is no objection you can concede that they be admitted in evidence without admitting any responsibility.

Mr. Fitzwilliam: Yes, all right.

Mr. Nagel: Your Honor, may I introduce these?

Mr. Fitzwilliam: As far as any objection to

(Testimony of Mary Arramone.)

nese as to being reasonable or the fact they were incurred because of this accident, there will be none. Therefore I submit they may go in evidence with the understanding that there is no admission of liability.

The Court: All right. Then, for the record why don't you just read them off then, Mr. Nagel, and I will just give them numbers.

Mr. Nagel: Thank you, your Honor.

First is a bill from the San Joaquin General Hospital in the amount of \$140.00.

Next there is Jones Ambulance bill in the amount of \$69.00.

Next there is a bill from the St. Agnes hospital in Fresno in the amount of \$148.50.

Next there is a bill from Dr. George Wolf of Fresno in the amount of \$50.00.

Next there is a bill from Dr. A. W. Pearson, a dentist in [47] Fresno, and his bill is \$27.50.

Next there is an X-ray bill in the amount of \$10.00 from Doctors Milholland, McGehee, Leef and Keep.

The Court: How much is that?

Mr. Nagel: \$10.00, your Honor.

Next there are three bills attached together here coming from St. Luke's Hospital in Illinois, totaling \$167.55.

Next we have drug and medical bills totaling \$62.90, and further receipts totaling \$5.76 which were for cosmetics——

Q. Is that correct, Mrs. Arramone?

(Testimony of Mary Arramone.)

A. That is right.

Mr. Nagel: We have a bill from Dr. Voris, Harold C. Voris, in the amount of \$25.00.

And we have a bill from Dr. Paul V. Carelli, M.D., in the amount of \$25.00.

Next, your Honor, we have a bill from Charles J. Smalley, M.D., Chicago, Illinois, in the amount of \$126.00. May I just make this comment: The bill is for January 4th to and including March 18, 1955, and, again, that bill is in the amount of \$126.00.

Next there is a receipt for \$25.00, Sutter Hospital of Sacramento.

Mr. Fitzwilliam: The date of that bill is what?

Mr. Nagel: That is March 30, 1955.

Mr. Fitzwilliam: Thank you. [48]

Mr. Nagel: Next we have a bill from Dr. Lawrence R. Johnson. He was Barbara's dentist in Chicago? A. Yes.

Mr. Nagel: And that bill is \$462.00.

Mrs. Arramone—

The Court: That is all of them now?

Mr. Nagel: Yes, your Honor.

The Court: Wait, let me get these marked. Let those bills be marked Plaintiffs' Exhibits 26 to 38 respectively, starting in the order that they were listed—you have got them in that order, have you not?

Mr. Nagel: Yes, your Honor.

The Court: All right, in that order they will be marked as Plaintiffs' Exhibits 26 to 38, respectively, for the Plaintiff Arramone.

Testimony of Mary Arramone.)

(The documents referred to were marked Plaintiff's Arramone Exhibits 26 to 38, both inclusive, in evidence.)

Mr. Nagel: Q. Mrs. Arramone, I haven't asked you anything concerning any bill from Dr. Paul Greeley, the Plastic Surgeon, have I?

A. No.

Q. Nor have I asked you anything concerning any bill from Dr. Smalley up to November the 2nd or 3rd of 1954? A. No.

Q. Now I will ask you, during the months of November and December did Barbara continue to see Dr. Smalley? A. Yes, once a week.

Q. And we have no bill in evidence for November and December of 1954, is that correct?

A. No.

Q. Have you noticed any difference in Barbara's smile now as compared to what it was prior to her injury, Mrs. Arramone? A. Yes.

Q. What is the difference that you have noticed? A. Barbara has only a half smile.

Q. What do you mean by that?

A. She doesn't smile a complete smile, she can only smile with part of her mouth.

Mr. Nagel: No further questions of Mrs. Arramone at this time, your Honor.

Mr. Pacht: We have no questions, your Honor.

Mr. Fitzwilliam: I have no questions, your Honor. Thank you.

Mr. Nagel: Your Honor, with the Court's permission we would ask that we be allowed to read

Dr. Paul Greeley's, the plastic surgeon, deposition into evidence. I might state we have gone over the deposition with Mr. Fitzwilliam and we have ironed out all possible difficulty. However, in the light of the shortage of the number of depositions, it probably—— [50]

Mr. Fitzwilliam: I think this, your Honor, that we will have to share one.

Mr. Stutsman: There are two corrected copies, your Honor.

The Court: The original is not corrected?

Mr. Nagel: No, we haven't, your Honor.

Mr. Fitzwilliam: May we read it into the record as corrected?

The Court: All right, you may. This evidence will apply only to Barbara Arramone.

Mr. Nagel: That is correct, your Honor.

Mr. Fitzwilliam: Rather than reading the entire preamble, I think counsel can tell us where and when the deposition was taken and under what circumstances.

The Court: Yes. It was taken by stipulation, wasn't it?

Mr. Nagel: Yes, your Honor.

The Court: And it was a deposition taken by stipulation of the parties?

Mr. Nagel: Yes, it was.

Mr. Fitzwilliam: In Chicago.

Mr. Nagel: In Chicago.

This deposition was taken on the first day of November, 1954.

May we commence with page 3, your Honor?

DEPOSITION of DR. PAUL WEBB GREELEY

(Mr. Nagel reading the questions and Mr. Stutsman reading the answers.)

‘By Mr. Nagel:

Q. Doctor, what is your full name?

A. Paul Webb Greeley.

Q. Dr. Greeley, are you a duly licensed and practicing physician and surgeon in the State of Illinois?

A. I am.

Q. And where are your offices located?

A. 224 South Michigan Boulevard in Chicago.

Q. Now, Dr. Greeley, would you please relate the schools that you have attended and the degrees you have earned prior to being licensed as a physician and surgeon?”

Mr. Fitzwilliam: (Reading “Let me say this, for the purpose of the record, that we will agree that the Doctor is eminently well qualified, in order to expedite and shorten the record, if you so desire.”

Mr. Nagel: “Mr. Nagel: I appreciate your offer, Mr. Pause, but I believe that we would like to have Dr. Greeley’s background.”

The Court: May I interpose a suggestion here, that when you spoke, Mr. Fitzwilliam, you were speaking for Mr. Pause who represented your office at the time this deposition was taken? [52]

Mr. Fitzwilliam: That is right.

The Court: So when the response sounded like it was addressed to Mr. Pause, you are simply here

(Deposition of Dr. Paul Webb Greeley.)
in lieu of Mr. Pause who assisted you in taking that deposition in Chicago?

Mr. Fitzwilliam: That is right.

The Court: I would like to make that clear. Proceed.

Mr. Nagel: (Reading) "Would you be kind enough to answer my question?

"A. I graduated with a bachelor of arts degree from the University of Illinois in 1923, and Doctor of Medicine degree from Northwestern Medical School in 1927.

Q. Where did you intern, Doctor?

A. The Evanston Hospital.

Q. That is located where?

A. Evanston, Illinois.

Q. Where did you commence the practice of medicine? A. In the State of Illinois.

Q. And when did you so commence the practice of medicine? A. In 1929.

Q. Dr. Greeley, have you had any special training?

A. I have been trained, in addition to my internship, with three years' training in general surgery, two years' additional training in plastic surgery.

Q. Now, do you specialize in any particular branch of medicine? [53]

A. I specialize in plastic surgery.

Q. Now, what do you mean by specializing in plastic surgery? What does it mean to the layman?

A. It covers a large variety of instances, but

(Deposition of Dr. Paul Webb Greeley.)

predominantly the reconstruction or the repair of injuries to the face, the correction of congenital deformities, reconstructions following surgical defects of the face and hands, following injuries, removal of tumors, and so forth.

In this particular instance having to do with the repair of post-traumatic scars of the face.

Q. How long have you specialized in this plastic surgery as you have described it?

A. Since 1936.

Q. Have you constantly and continuously practiced your specialty since then?

A. I have.

Q. In what hospitals did you practice?

A. I take all of my private patients at St. Luke's Hospital in Chicago, and I also have charge of the Plastic Surgery Service at the University of Illinois College of Medicine; consulting surgeon at the United States Veterans' Administration Hospital at Hines, Illinois, and also at the United States Naval Hospital at Great Lakes.

Q. Now, Dr. Greeley, in the practice of your profession, [54] and more particularly the practice of your specialty, did you have occasion to examine and subsequently treat Barbara Arramone?

A. I did.

Q. Where did you first see her?

A. I saw her in my office.

Q. And when was that?

A. October 8, 1953.

(Deposition of Dr. Paul Webb Greeley.)

Q. You are referring to documents. Are those documents made by yourself?

A. Yes, sir.

Q. Relating to your treatment and care of Barbara Arramone?

A. They are.

Q. Now, at the time that you saw her did you, Doctor Greeley, obtain a history from her?

A. Yes, I did.

Q. What was that history that you obtained?

A. May I quote from my record?

Q. Surely.

A. She was referred to me for the care of multiple facial scars which had been received during an automobile injury that had occurred in California.

Q. Now, Dr. Greeley, at that time did you make a physical examination of Barbara Arramone on this occasion when you [55] saw her?

A. I did, in so far as it involved her injury.

Q. Would you relate the findings of your physical examination at that time?

A. This patient had multiple diffuse irregular facial scars that were disfiguring, by all standards of measurement.

Q. I first show you this photograph, which shows a picture of a young girl, and I will ask you: Do you recognize that photograph?

A. I do."

Mr. Nagel: Your Honor, maybe we ought to just take the photographs—whatever the Court thinks will be the most orderly—

Deposition of Dr. Paul Webb Greeley.)

Mr. Stutsman: They are in with the original deposition. There are two or three of them, aren't there?

Mr. Nagel: Yes. May I repeat my prior question? "I first show you this photograph, which shows a picture of a young girl, and I will ask you: Do you recognize that photograph?"

A. I do.

Q. And that is a photograph of whom?

A. Barbara Arramone.

"May we identify this picture, referred to by Dr. Greeley, as Plaintiff's Exhibit G-1 for identification?" [56]

Mr. Nagel: May we, at this time, offer Plaintiff's Exhibit G-1, heretofore identified, into evidence.

The Court: Is that different from the photographs that were offered this morning?

Mr. Nagel: Yes, your Honor. They do show certain aspects of the injury.

Mr. Fitzwilliam: In order to save time I will stipulate they all go in now at this time. They are all marked for identification, your Honor.

The Court: All right, let us just have them marked now so we can proceed without further delay. How are they identified there?

The Clerk: G-1 is the first, G-2 is the second, and G-3 is the third.

The Court: All right, let them be marked in evidence in that numerical order, Plaintiff's Exhibits 39, 40 and 41 for the Plaintiff Barbara Arra-

(Deposition of Dr. Paul Webb Greeley.)
mone, and they will be received in evidence at this time.

(The photographs referred to were marked Plaintiff's Exhibits 39, 40 and 41.)

Mr. Nagel: (Reading)

"Mr. Nagel: Q. May I next show you a photograph of a young girl, which shows primarily the left face, and I will ask you, Dr. Greeley, do you recognize that photograph?

"A. I do, as Barbara Arramone.

"May we identify that as Plaintiff's Exhibit G-2 for identification."

Mr. Nagel: Your Honor, that is now in evidence. Maybe we can leave out—

The Court: That is in evidence as Plaintiff's Exhibit 40 in this case?

Mr. Nagel: Yes, your Honor. (Continuing reading): "Q. Dr. Greeley, I next show you a third picture, which purports to be a photograph of a young girl, showing the right face, and ask you if you recognize that face?

"A. I do, as Barbara Arramone.

"May we identify this third photograph as Plaintiff's Exhibit G-3 for identification?"

The Court: That is Plaintiff's Exhibit 41 in this case.

Mr. Nagel: (Reading)

"Q. Dr. Greeley, I have asked you in one of my prior questions whether you made a physical examination, and I have asked you to relate the findings of your physical examination. May I ask you,

Deposition of Dr. Paul Webb Greeley.)

rest of all, would looking at these photographs assist you in telling us what your physical findings were? A. Yes.

Q. Upon that occasion? [58] A. Yes.

Q. I show you first of all Plaintiff's Exhibit that we have entitled G-1 for identification and ask you to use that photograph to answer my question of what your physical findings related.

A. Well, there is a curved disfiguring scar arising in the central portion of the forehead, from the left side, that extends downwards laterally towards the right and into the right upper eyelid. I would estimate this scar to be approximately three inches in overall length, by an average of $3/16$ inch in width.

Q. Continue, doctor?

A. There is another scar just below this transecting the glabella that extends from the medial aspect of the left orbit, across the glabella and into the right upper lid. This scar averages $1/4$ inch in height and is roughly $2\frac{1}{2}$ inches in overall length.

I can see a vertical scar arising from the left eyebrow to the eyebrow upwards, and disappearing into the hairline in the left frontal area, that I would estimate to be four inches in overall length, by one-eighth inch in width.

There is a transverse scar across the central portion of the nose that is one-half inch in height at its maximum width, and is approximately $1\frac{1}{2}$ inches in overall transverse length. [59]

There is a scar arising from the left angle of the

(Deposition of Dr. Paul Webb Greeley.)

mouth that extends upwards over the malar eminence of the left cheek. This scar is $4\frac{1}{2}$ inches in over-all length, by an average of $\frac{3}{16}$ inch in width.

There is also noted that she has a complete loss of the nasal labial fold on the left side when she smiles, which to me is indicative of having arisen from a division, with subsequent paralysis, of the middle branch of the left facial nerve.

There is a curved edematous flap-like scar involving the right half of the chin, that extends up into the vermilion border of the lower lip in its medial aspect. This is approximately one inch in over-all diameter, and the scar around the periphery is nearly two inches in over-all length.

There are other scars in the right cheek which are difficult to identify from this photograph view.

Q. May I, Dr. Greeley, show you another photograph entitled Plaintiff's Exhibit G-3 for identification, showing the right side of a young girl, and ask you if that will better enable you to further describe the scars upon the right side?

A. There is a transverse scar over the right zygomatic arch that is one-fourth inch in height by two inches in over-all length. [60]

There is another smaller scar just lateral to the right nasocanthal fold that is one inch in height by one-eighth inch in width.

Q. Dr. Greeley, I will show you a third photograph, entitled Plaintiff's Exhibit G-2 for identification, showing the left side of a young girl, and ask you whether that photograph will further en-

(Deposition of Dr. Paul Webb Greeley.)

able you to describe the physical findings that you made upon the occasion that you are testifying to at this time?

A. I do not feel that it gives any additional information over and above what I have already described.

Q. Now, Dr. Greeley, I will ask you this: Do those three photographs portray the condition that Barbara Arramone was in at the time that you first saw her upon the occasion that you have testified to? A. They do.

We are asking, then, that these three pictures be entered into evidence, Mr. Pause."

Mr. Fitzwilliam: And they have been.

Mr. Nagel: And they have been. (Continuing reading.)

"Q. Now, Dr. Greeley, since Barbara saw you upon the first occasion, did you subsequent thereto perform plastic surgery? A. I did.

Q. And upon what occasion was that? [61]

A. It was on October 19, 1954.

Q. And where was the surgery performed?

A. At St. Luke's Hospital in Chicago.

Q. Doctor, would you be kind enough to tell us in detail what you did at the time, and upon the occasion that this plastic surgery was performed? And if it will assist you, you can use these three photographs. And I respectfully suggest that when and if you do use these photographs in trying to tell us what you did, that when you use a particular picture, you call it G-1, 2, 3.

(Deposition of Dr. Paul Webb Greeley.)

A. In order of sequence at the operation, the curved scar in the central portion of her forehead and that transecting the glabella were excised completely. Following this, after wide undermining of the adjacent tissues, in order that the wound could be closed without tension, they were then sutured together with multiple interrupting sutures of 6-0 nylon, using approximately 50 sutures in these two scars.

The next scar that was excised was that one arising from her left brow that extended up within the hair line in the left frontal area. After excision of this scar, the borders were undermined freely, and the wound closed with interrupted sutures, plain and horizontal mattress sutures of 6-0 nylon, using approximately 35 total stitches.

The next scar to be excised was that arising from the left [62] angle of her mouth. After excision of this scar and before it was closed, a so-called Z-plasty was injected.

Q. Could you tell us why that was made?

A. The Z-plasty was injected along the suture line in order to stagger the suture line and break up the straight line pull that was producing a certain amount of distortion from the left angle of her mouth. This wound was then closed with approximately 35 sutures of 6-0 nylon.

The next scar to be excised was that over the right zygomatic arch and on the right cheek. After excision and undermining the adjacent skin flaps

(Deposition of Dr. Paul Webb Greeley.)

involving these two scars, the wounds were closed with approximately 20 interrupted sutures of 6-0 nylon.

The next scar to be excised with the edematous flap involving the right half of her chin. In addition to excising the scar, the flap was lifted up and thinned so as to minimize its thickened appearance, following which it was reinserted into its bed and the skin margins closed with approximately 30 interrupted sutures of 6-0 nylon.

The final scar to be excised was that transecting the dorsum of the nose. Because of the gap in this area, it was impossible to close this without placing undue tension on the skin edges; consequently, an operation was then carried out to shorten her nose in such a manner that the tip of her nose was brought up and thus shortening the [63] gap between the skin edges, and permitting an effective cosmetic closure of this wound.

The wound was closed with approximately 15 interrupted sutures of 6-0 nylon and two interrupted sutures of 4-0 chromic catgut within the nose.

Extensive pressure dressings were then placed over all the operative sites.

Q. Dr. Greeley, how long a period of time did you and your assistants take in performing these procedures that you have just outlined?

A. Approximately three hours.

Q. And do you know how long a period of time Barbara Arramone was hospitalized as a result of the surgery that you performed?

(Deposition of Dr. Paul Webb Greeley.)

A. She was hospitalized from October 19th through 23rd of 1954.

Q. Dr. Greeley, do you have an opinion based upon medical certainty, as to the amount of cosmetic recovery that you will be able to obtain if you continue with Barbara's treatment in your specialty?

A. I would estimate that 75 per cent cosmetic improvement might be effected from the surgery that has been and might subsequently have to be carried out. In other words, she might anticipate a total of 25 per cent total permanent disability, cosmetically speaking. [64]

Q. Doctor, your opinion concerning the permanent disability from the cosmetic point of view is what per cent? A. Twenty-five per cent.

Q. Dr. Greeley, aside from the cosmetic disfigurement residual that you have just told us about, are there any other permanent effects that Barbara will have from the accident? And my question is directed solely to an answer that anticipates that you will answer within your specialty.

A. Objectively—I will qualify it—I would expect her to have a permanent paralysis involving the middle branch of the left facial nerve, which will cause inability to smile through the left angle of the mouth; and secondly, she cannot completely close her right upper eyelid because of some residual scar contracture that causes a mechanical block.

Q. Now, Dr. Greeley, do you have an opinion, based upon medical certainty, as to the need for

Deposition of Dr. Paul Webb Greeley.)
future plastic surgery in order to effect a greater degree of cosmetic recovery?

A. I believe she will have to have a few things done.

Q. Dr. Greeley, what have been your total charges to date for your treatment of Barbara Arramone?

A. The total charges up to this minute are \$25.00 for pre-operative work carried out in the office, and \$1250.00 for operation and after care in the hospital. [65]

Q. Dr. Greeley, in your professional opinion, as a physician and surgeon, are those charges reasonable?

A. I believe they are.

Q. Now, Dr. Greeley, would you give us your estimate of the probable reasonable future cost of medical treatment you believe to be reasonably necessary for Barbara Arramone?

I will ask you, before you answer the question, Dr. Greeley, this prior question:

In your opinion, based upon reasonable medical certainty, is it necessary that further and additional future work be done concerning Barbara?

A. Yes.

Q. As a physician and surgeon, would you give us your opinion, based upon medical certainty, as to the probable reasonable cost of such future medical treatment by yourself?

A. I would estimate that my fee would not exceed \$500, and that the hospital charges would not exceed a similar amount.

(Deposition of Dr. Paul Webb Greeley.)

Q. Now, Dr. Greeley, this probable reasonable future cost of \$500.00, is that in your opinion, a reasonable charge? A. It is.

Q. And from your knowledge, have you had extensive dealings with the hospital in these matters?

A. I have.

Q. And is your opinion as to the probable future cost of \$500.00 based upon your experience in these regards? A. It is.

Q. And is that estimate of \$500.00 for this probable future hospitalization, in your professional opinion, a reasonable charge? A. It is.

"I have no further questions of Dr. Greeley."

"Cross Examination"

(The questions being read by Mr. Fitzwilliam and the answers being read by Mr. Stutsman.)

"Q. Dr. Greeley, you refer to some notes that you had in your hand. May I look at those, please?

Dr. Greeley, you saw Barbara Arramone for the first time on October 8, 1953, is that correct?

A. Correct.

Q. And that was about a month and eight days after the date of the accident?

A. Approximately.

Q. Doctor, in connection with the work that you have performed for Barbara Arramone, you have obtained an excellent result in that regard up to this time, haven't you?

A. I think she is progressing very satisfactorily.

Q. And I believe you anticipate that you will do

(Deposition of Dr. Paul Webb Greeley.)

some further work; that was your testimony, is that correct? A. Correct.

Q. In connection with the surgery that was performed on the plaintiff, Barbara Arramone's nose, you obtained a symmetrical and good cosmetic result in relation to that injury that you described on the tip of her nose, didn't you, doctor?

A. I feel it's acceptable.

Q. And when was the last time that you attended and treated Barbara Arramone, based on your best recollection? A. Last week.

Q. This past week? A. This past week."

Mr. Nagel: May we insert here, your Honor, that this was taken on November 1, 1954, that statement.

Mr. Fitzwilliam: (Continuing reading.)

"Q. All right. And she has been in surgery but once? A. That is correct.

Q. And that was in October of 1954, within the past week, is that correct? October 19th to October 23rd?

A. Yes, October 19th, I believe it was.

Q. And the photographs that were identified by counsel representing the plaintiff were photographs that were taken before the operative procedure that you performed? [68] A. That is correct.

Q. The surgery that was performed on the scars on the forehead that you have described, you obtained an excellent result in that regard, is that correct?

A. I think they are very good, considering what we started out with.

(Deposition of Dr. Paul Webb Greeley.)

Q. Now, between October 8th of 1953 and October 19th of 1954, you performed no surgery at all?

A. Correct.

Q. Was there any treatment administered at all by you between October 8th of 1953, and October 19th of 1954?

A. There was not.

Q. All right. Did you have occasion to attend or treat Barbara Arramone between October 1953 and the time that she entered the St. Luke's Hospital?

A. She was in my office once, I believe, in early October of this year.

Q. In relation to the cosmetic result that you have obtained after the surgery that you have described, I take it that powder and cosmetics will, in large part, cover the remaining scarring that you have already related, is that correct, doctor?

A. I would say it would be difficult to disguise it with cosmetics.

Q. The contour of the chin is good by reason of the operative [69] procedure that was performed on this edematous flap-like scar that you mentioned, is that correct?

A. Yes, it is improved.

Q. And time, of course, will aid additionally in the improvement, isn't that true, doctor?

A. That is correct.

Q. In a letter that you directed to the attorney representing your patient, Mr. Nagel, dated October 8th of 1953, in the last paragraph of that correspondence, did you there mention that your fee for caring for Barbara Arramone and the surgery that you contemplated a year ago would be \$750.00?

(Deposition of Dr. Paul Webb Greeley.)

A. I believe I made that estimate. I would have to see the letter, but actually there was more surgery involved than met the eye when they came to do it a year later.

Q. You also mentioned in that same correspondence to counsel representing the Plaintiff Barbara Arramone, that potential minor procedures by way of surgery would cost possibly an additional \$250.00?

A. I might have said that at that time. That was the first time I saw the patient, of course.

Q. In rendering an opinion as to the result and the cosmetic defect that you have mentioned, and the permanent aspect in regard to the cosmetic defect, did you take into account the fact that a woman, of course, will use cosmetics, [70] such as powder and rouge to cover? A. I did.

Q. That is, cover her face?

A. She would still have 25 per cent deformity, whichever way you look at it."

Redirect Examination

(The questions being read by Mr. Nagel and the answers being read by Mr. Stutsman.)

"Q. Just one question, Doctor: Since your original estimate of October 8th, you have already testified that there was more surgery performed than you had originally anticipated. In addition to that, did you have brought to your attention, did you find further and additional disabilities, such as perhaps the right eye, that were not fully brought to

(Deposition of Dr. Paul Webb Greeley.)

your attention upon the first occasion that you saw her?

"A. That was one thing. But predominantly the amount of additional work was based around the fact that what scarring appeared on the outside was only part of it. There is much diffuse scarring spread out underneath that you could not see until you were actually in the operating room, all of which involved a lot more surgery.

"No further questions."

Mr. Fitzwilliam: "That's all."

Mr. Nagel: May we next, your Honor, with the Court's [71] permission proceed into Dr. Johnson's, the dentist's, deposition?

The Court: Yes.

Mr. Nagel: Your Honor, this deposition too was taken in Chicago, on November 2, 1954.

DR. WARREN R. JOHNSON

(Thereupon the deposition of Dr. Warren R. Johnson was read into the record, Mr. Nagel reading the questions and Mr. Stutsman reading the answers:)

"Q. Dr. Johnson, you have been sworn, have you? A. Yes, sir.

Q. I perhaps should tell you that this is the time and place set for your deposition, and that means that I, as the attorney for Barbara Arramone will ask you certain questions and you will be asked to answer those questions and the shorthand reporter will, even as he is now, take down all the questions

(Deposition of Dr. Warren R. Johnson.)

and all the answers, and if at any time I ask you a question that is not clear to you, please do not hesitate to ask me to clarify the question.

Would you be kind enough to give us your full name, Doctor? A. Warren R. Johnson.

Q. Dr. Johnson, are you a duly licensed and practicing Doctor of Dental Surgery?

A. Yes, sir.

Q. In the State of Illinois? [72] A. Yes.

Q. And your offices are located where?

A. 3215 West North Avenue.

Q. Dr. Johnson, would you kindly relate the schools that you have attended and the degrees that you have earned prior to being licensed as a dentist?

A. In undergraduate work I attended the University of Notre Dame and Northwestern University, and in order to attain the degree of D.D.S., I attended Northwestern University School of Dentistry.

Q. Where did you commence the practice of dentistry, doctor?

A. At 3215 West North Avenue in 1951.

Q. That is here in Chicago, Illinois.

A. Yes, that is here in Chicago, Illinois.

Q. Dr. Johnson, do you belong to any medical societies?

A. I belong to the American Dental Association and all its component societies.

Q. Do you practice your profession in any hospital in Illinois?

(Deposition of Dr. Warren R. Johnson.)

A. Yes, I am a member of the staff of the Norwegian American Hospital and instructor in oral pathology at Northwestern University Dental School.

Q. Being instructor in Northwestern Dental School what does that consist of? [73]

A. Well, that involves a day and a half a week clinical and theoretical instruction to the students.

Q. Dr. Johnson, in the practice of your profession have you had occasion to and did you examine and treat Barbara Arramone? A. Yes, sir.

Q. Did you know and were you informed that she was involved in an automobile accident upon August 27, 1953? A. Yes, I was.

Q. Now, Doctor Johnson, can you tell us when the first time was after August 27, 1953, that you saw Barbara Arramone?

A. Yes, October 12, 1953.

Q. At that time did she come to your offices, is that it? A. Yes, sir.

Q. Did you at that time obtain a history from her? A. Yes, sir.

Q. Would you be kind enough to relate the history that you did so obtain?

A. I obtained the history that she was in an automobile accident in California and had lost four teeth, and traumatized others. And then I proceeded with my examination.

Q. Dr. Johnson, did you make a physical examination upon the date you have just testified to?

A. Yes, sir. [74]

(Deposition of Dr. Warren R. Johnson.)

Q. Would you be kind enough to tell us what your findings of that physical examination consisted of?

A. I found that she had lost the upper left cuspid and upper left first bicuspid.

Q. What does that mean in layman's language?

A. The upper left eyetooth and the first tooth in back of the left upper eyetooth.

Q. Please proceed with your answer, Dr. Johnson.

A. And the lower left central and lateral, the lower left front tooth and the tooth just in back of it.

Q. You say those were the four teeth that were missing?

A. They were missing. Also she had cracked the right first bicuspid. I don't know how to put it any more simply. It is the first tooth in back of the eyetooth on that side, and the lower right second bicuspid.

Q. What was the condition of this last tooth that you just mentioned?

A. She had fractured that tooth also.

Q. Would you describe the condition of Barbara's mouth as you saw it upon this date that you have testified to?

A. Well, in addition to the missing teeth and the teeth that were fractured she had soft tissue lesions on the buccal mucosa, that is the inside of the cheek, and the inner aspects of the lips.

Q. What do you mean by lesions, doctor? [75]

A. Well, I imagine where scar tissue had become

(Deposition of Dr. Warren R. Johnson.)

to form; but I mean you could see there was still inflamed areas in the places.

Q. Will you describe to us any further and additional traumatized area or areas if there were such?

A. It was obvious that in addition to the teeth that she had lost that the adjacent teeth were traumatized also, not being fractured, but you could tell there had been a—they were slightly mobile, and that they were evidently traumatized at the time of the accident.

Q. Where were these traumatized areas with reference to the missing teeth you have described?

A. In the anterior, or front portion of the mouth.

Q. Did Barbara complain of suffering and pain?

A. She has sensitive teeth, and the areas where she lost the teeth were sensitive.

Q. What, if anything, did your examination disclose with reference to sensitive areas within the mouth?

A. Well, these teeth that were fractured were very hyperemic and sensitive to trauma, which as teeth that are cracked usually are, and the area where she has lost the teeth has not been completely healed yet. I mean, there was still a bony process of regeneration occurring in those areas.

Q. You have used the expression 'trauma,' and 'traumatized [76] area.' What is meant by those expressions, medically, Dr. Johnson?

A. Well, 'trauma' implies a blow. A traumatic

(Deposition of Dr. Warren R. Johnson.)

injury is an injury that is violent; a violent injury, a traumatic injury.

Q. Did your examination disclose any such injury? A. Yes.

Q. Dr. Johnson, did you take any X-rays of Barbara Arramone upon the occasion that she visited you? A. Not on the first occasion.

Q. When did you take X-rays of Barbara Arramone? A. October 17, 1953.

Q. Do you have those X-rays with you, Dr. Johnson? A. I do.

Q. Now these X-rays were taken by whom?

A. By myself.

Q. Whose equipment did you use?

A. My own.

Q. What kind of equipment do you have?

A. General Electric X-ray machine.

Q. What, if any, steps did you take to identify the X-rays?

A. Well, the X-rays, immediately after they are taken, are put into an envelope, marked by myself, and then developed by myself and mounted on the regular mounts, with [77] the patient's name.

Q. From the steps that you took are you positive, Dr. Johnson, that the X-rays that you now have that purport to be Barbara Arramone's are in truth and in fact the X-rays of Barbara Arramone?

A. I am.

Q. May I see your X-rays, Dr. Johnson?

"May we, Mr. Pause, identify this series of X-

(Deposition of Dr. Warren R. Johnson.)

rays as Plaintiff's Exhibit next in order, and with the identifying mark of J-1 for identification?

"Mr. Pause: Yes."

Mr. Stutsman: I believe they are in the deposition.

Mr. Nagel: May we have these——

The Court: This envelope and the X-rays contained will be marked Plaintiff's Exhibit 42——

Mr. Nagel: Thank you, your Honor.

The Court: ——for the plaintiff Arramone.

(The envelope and the X-rays referred to were marked Plaintiff's Exhibit No. 42.—Arramone.)

(The reading of the deposition was continued with Mr. Nagel reading the questions and Mr. Stutsman the answers:)

"Q. There are in this document fourteen X-rays?

A. There may be two others in the envelope, bite wing films. Yes, two other bite wings, and one of the—let's see; one of the lower right posterior area.

Q. Now, Dr. Johnson, you have handed me two further and additional X-rays, one card having a single X-ray and another card having two X-rays?

A. Yes.

Q. And these, also, X-rays of Barbara's teeth?

A. They are.

Q. Did you also, in these cases, take the same precautionary measures that you testified to?

A. Yes, sir.

Q. Are you also certain that these X-rays are

(Deposition of Dr. Warren R. Johnson.)

in fact—that they do show the teeth of Barbara Arramone? A. I am.

Q. Do they show the teeth of Barbara Arramone in so far as an X-ray can do that, and their condition upon the date that you have testified these X-rays were taken? A. They do.

Q. This large folder here containing fourteen X-rays we will identify as Plaintiff's J-1 for identification. The card containing two X-rays, upon one card we will mark Plaintiff's J-2 for identification"—

May we offer J-2 for identification into evidence, your Honor, as Plaintiff's Exhibit next in order?

The Court: Well, why don't we just leave all those in the envelope and mark the large card "42" and the one with the two X-rays on "42-A" and the one with the one X-ray on [79] it "42-B" and they will all be together as one exhibit.

Mr. Nagel: Thank you.

(The X-rays referred to were marked as Plaintiff's Exhibits 42-A and 42-B for the plaintiff Arramone.)

Mr. Fitzwilliam: May the record show and may the jury be instructed at this time, your Honor, that these X-rays were all taken on October 17, 1953?

Mr. Nagel: Whatever the testimony is. I think it was October 17th; I think that is what Doctor Johnson testified to, isn't it?

Mr. Fitzwilliam: Yes, I think so, and they are marked on there.

Mr. Nagel: All right.

(Deposition of Dr. Warren R. Johnson.)

Mr. Stutsman: You left off the last line, "and the third."

Mr. Nagel: (Continuing reading) ——"—and the third and last card containing a single X-ray, we will identify as Plaintiff's J-3 for identification.")

Your Honor, that has now been marked——

The Court: That is marked "42-B."

(The deposition of Dr. Warren R. Johnson was continued with, Mr. Nagel reading the questions and Mr. Stutsman reading the answers.)

"Q. Doctor Johnson, I will hand you Plaintiff's J-1; this is the series of X-rays containing some fourteen X-rays. [80] Would you be kind enough to use this document and explain to us the treatment that you rendered to Barbara Arramone. Please keep in mind that we want to designate which of the particular X-rays we are pointing to when you go into a discourse of this matter.

A. The upper left eyetooth and first bicuspid were replaced by a fixed bridge, using the upper left lateral and the upper left second bicuspid as abutments for them.

Q. Now, Dr. Johnson, you mean, in layman's language, you put in one false tooth?

A. No, we replaced two teeth, using the upper left lateral and upper left second bicuspid present in the mouth as the ends to the bridge. Those teeth had crowns placed on them to hold the bridge into position.

Q. Please proceed, Dr. Johnson.

(Deposition of Dr. Warren R. Johnson.)

A. The lower left central and lower left lateral were replaced by using the lower right central and lower left cuspid as abutments for them. In other words, they had crowns placed upon them. Two pontic, or dummy teeth were joined to these crowns, replacing the missing teeth.

Q. Well, Dr. Johnson, by that you mean, generally speaking, that you have used two teeth as anchors, is that correct? A. That is right.

Q. Please proceed. [81]

A. The upper right first bicuspid which was fractured was replaced with a full—or, covered with a crown.

Q. And the crown was of what?

A. The crown was of gold, with an acrylic or plastic front, and the lower right second bicuspid was replaced in a like manner.

She also had operative restorations placed in five teeth.

Q. What do you mean by that, Dr. Johnson?

A. I mean she had these teeth restored with silver amalgam restorations.

Q. How did you accomplish that, Dr. Johnson?

A. Well, that is removing any chipped corners or carious areas, decayed areas, and restoring the missing tooth structure with silver amalgam.

Q. Doctor, did you find any chipped areas?

A. Yes. However, it was my opinion as a dentist that any carious areas that were present at the time should be restored before any prosthetic replacement was gone into.

(Deposition of Dr. Warren R. Johnson.)

Q. Doctor Johnson, I will ask you this: Did you care for and were you the dentist of Barbara Arramone prior to August 27, 1953? A. I was.

Q. For how long a period of time were you her dentist prior to the occasion she visited you, at which time she [82] complained of the accident?

A. Two years.

Q. Did you have in your records anything to show the condition of Barbara's teeth prior to the time she complained of having been in an accident?

A. Yes, I did.

Q. Now, with reference to the four teeth that were missing, can you tell us what the condition of those four teeth were? A. Normal teeth.

Q. The four teeth that you have told us about that were missing, and concerning which we have two separate bridges, that is correct, is it?

A. Yes.

Q. Dr. Johnson, how long prior to the date of the accident was it that you saw Barbara Arramone? Do your records disclose that? If they do not, what is your best judgment as to what that was?

A. Eight months.

Q. On that occasion, will you describe the condition of her teeth?

A. The condition of her teeth at that time were good and normal in so far as I was able to judge. I mean, she had finished her treatment planned at that time.

Q. Dr. Johnson, the X-rays that you have taken and that [83] are introduced into evidence here, do

Deposition of Dr. Warren R. Johnson.)

they show any damage to soft tissue? A. No.

Q. Dr. Johnson, from your professional experience, and in your professional opinion, what, if any, effect did the injury that Barbara sustained to her mouth have upon her bite?

A. She lost a great deal of her chewing and biting efficiency as a result of the loss of those teeth. Now, when they were restored she regained a great deal of that chewing and biting efficiency but not one hundred per cent of it, not complete.

Q. How important is bite, in dentistry, Dr. Johnson?

A. Well, bite, of course, determines a number of things. It determines the efficiency with which you masticate your food, it determines to a slight extent the contour of the face.

Q. Dr. Johnson, what, if any, effect did the trauma have upon the remaining teeth in Barbara's mouth?

A. These teeth in the X-ray did not show any pathology about the ends of their roots as a result of trauma at that time. However, they were given vitality test and shown to be vital, but were observed by me frequently when she came in, while she was having her other treatment performed. [84]

Q. How many traumatized teeth did you find in Barbara's mouth?

A. I would say two or three teeth on either side of the major traumatic area where the teeth were lost.

Q. Is a traumatized tooth any different from a normal tooth, Doctor? A. Yes.

(Deposition of Dr. Warren R. Johnson.)

Q. How, and in what regard, were the traumatized teeth of Barbara Arramone any different from the normal teeth?

A. Assuming that these traumatized teeth were vital which we established, they were nevertheless, hyperemic.

Q. By that you mean what, Doctor?

A. By that I mean there was a greater flow of blood through these teeth as a result of the traumatic injury making them more sensitive and irritable at that time.

Q. With reference to length of use of teeth, Doctor, what, if any, effect did trauma in Barbara's case have in that regard?

A. Would you tell me if you mean the teeth that were lost or these other natural teeth?

Q. The teeth that you have described as being the remaining traumatized teeth?

A. These traumatized teeth are probably now beyond the stage of any further pathology occurring.

Q. Do your records disclose upon how many occasions you [85] saw Barbara, in treating her?

A. Forty-one times.

Q. Was the first visit upon the occasion you have testified? A. On October 12th, yes, sir.

Q. And the visits took place from that first visit until your hearing here today, is that correct?

A. That is right.

Q. Dr. Johnson, what charges have you made to date for treating Barbara? A. \$462.00.

(Deposition of Dr. Warren R. Johnson.)

Q. Are those charges, in your professional opinion, reasonable? A. Yes.

Q. Doctor, you have testified in doing restoration work for Barbara here, that you, first of all, have inserted two bridges. Is that correct?

A. Two fixed bridges.

Q. Two fixed bridges. Now what is your best judgment as to the life of each of these bridges, considering the age of Barbara, the condition of her mouth, and the work you did in fixing these bridges? A. Ten to twenty years.

Q. And assuming for the sake of argument, Dr. Johnson, that you have to, yourself, replace those bridges with new [86] and other bridges within that period what, in your opinion, would be the reasonable cost of such work? A. \$350.00.

Q. That is for both bridges, is that correct?

A. That is correct.

Q. Now, Dr. Johnson, you have also testified that you placed two crowns upon two further and additional teeth, is that correct?

A. That is right.

Q. Now, do you have an opinion, predicated upon medical certainty as to the probable life of the crowns of those two teeth?

A. Ten to twenty years.

Q. And in your opinion, Dr. Johnson, what will be the cost of replacing those crowns?

A. \$120.00 for both.

Q. Now, you have given us your opinion that the life of these bridges would be from ten to twenty

(Deposition of Dr. Warren R. Johnson.)

years. Is that opinion based upon reasonable medical certainty?

A. That opinion is based primarily upon averages which are very difficult to determine in cases like that. Some bridges last forty years, some last seven years. It is very difficult to say how long a bridge will last because there are so many other complicating factors that can influence its life. [87]

Q. By the way, that estimate of \$120.00 for the replacement of the crowns, is that estimate, in your opinion, reasonable? A. Yes, sir.

Q. Well, Dr. Johnson, how and in what regard are Barbara's teeth, that you have testified to, that you worked upon, any different from normal teeth?

A. Bridges? Are you referring specifically to the bridges?

Q. I am referring particularly to the teeth that you used to anchor the bridges, and then the capped teeth, and then later on I will ask you about the traumatized teeth.

A. These teeth supporting the bridges and the teeth with the crowns on them had to necessarily be ground down or reduced in size in order to accommodate the crown that covered them.

Q. And what did you have to do to the teeth that you capped?

A. The same thing. We had to grind down or reduce those teeth in size also.

Q. The grinding that you have just described. What effect does that have upon the life's expectancy of a tooth?

(Deposition of Dr. Warren R. Johnson.)

A. Again, a difficult question to answer, but certainly reducing the tooth or crowning the tooth doesn't do anything to prolong the life of the tooth, per se. It is only done [88] when necessary in order to replace other teeth, or when that particular tooth is injured.

Q. Well, does it shorten the life span of the tooth? A. I would have to say yes.

Q. Dr. Johnson, would you describe to us what, if anything, you did with reference to the bite, concerning which you have already given us some testimony?

A. The bite was restored as closely as is mechanically possible with the crowns on the abutment teeth and the dummy teeth or pontic teeth, that were used to replace the missing teeth.

Q. Well, as a physical thing what did you do to restore the bite?

A. Inserted these two fixed bridges and two crowns that restored the bite of the patient.

Q. Did you do anything further?

A. No, other than make sure that the bite of the bridges and the crowns was as nearly correct as possible.

"I have no further questions of Dr. Johnson, Mr. Pause."

Cross Examination

(The cross examination was read as follows, Mr. Fitzwilliam reading the questions and Mr. Stutsman the answers.)

"Q. Doctor, did you bring your office card with

(Deposition of Dr. Warren R. Johnson.)

you today in connection with giving testimony in this case? [89]

A. It isn't truly an office card. There is an examination sheet here with Barbara's name and telephone number on it.

Q. Does that card contain all the information with reference to Barbara Arramone?

A. No.

Q. You have a regular office card, a hard card, that you keep in your index in reference to this patient, is that correct?

A. A hard card, an ordinary invoice, regular invoice sheets, yes, sir.

Q. You referred to a yellow sheet of paper in reference to giving testimony here today, is that correct? A. Yes, sir.

Q. And that record that you have in your hand is the one that you referred to. Might I look at it?

A. Yes, sir.

Q. This record does not disclose the number of visits, professional visits that were made by Barbara Arramone, does it? A. No, sir.

Q. So that when you say you attended and treated her forty-one different times you are relying entirely on your memory? A. No, sir. [90]

Q. Well, you did not bring your card with you, did you, Doctor, in so far as your professional attendance? A. No.

Q. How old are you, Doctor?

A. I am twenty-nine years old.

(Deposition of Dr. Warren R. Johnson.)

Q. And you have been practicing dentistry since 1951? Is that right? A. That is correct.

Q. And when you first attended and treated Barbara Arramone you had been practicing approximately two years, is that right?

A. In so far as this accident is concerned, I saw her in my first year of practice as a regular patient.

Q. You have a degree of D.D.S., rather than an M.D., or a degree for an oral surgeon, is that right?

A. That is right.

Q. You are not an oral surgeon?

A. No, sir.

Q. Nor are you an orthodontist?

A. No, sir.

Q. Is that correct? A. That is right.

Q. There was one tooth missing, the eyetooth in the upper jaw, is that correct?

A. Two teeth, the eyetooth and——

Q. Two teeth or one? [91] A. Two.

Q. I see. And those were replaced within what period of time after you saw Barbara Arramone for the first time?

A. The upper bridge was replaced in two months.

Q. And the lower bridge was——

A. Within another two months.

Q. That is a common occurrence, to put in bridgework in a patient's mouth, isn't that true, doctor? A. That is right.

Q. You do a lot of that, I take it, is that correct? A. Yes.

(Deposition of Dr. Warren R. Johnson.)

Q. The function of placing bridgework, or putting in a pontic tooth, is to preserve the contour of the jaw and the contour of the face, is that correct?

A. That is right.

Q. And you have done that, haven't you?

A. Yes.

Q. Doctor, you mentioned that trauma is a violent blow; actually trauma might be induced, in the dental aspects of the anatomy of a patient in this regard by way of grinding of the teeth?

A. That is right.

Q. Isn't that true? A. That is right.

Q. So that trauma might be a very slight—

A. Its impact might be slight, but 'trauma' as used, [92] the word as understood today, involves a severe irritation, or the result of a severe irritation.

Q. Well, doctor, if I put my fingers on my teeth, that is trauma, isn't that true?

A. Well, that is a matter of degree, and I wouldn't discuss degree with you.

Q. Yes, sure. In regard to these X-ray films which have been marked as Plaintiff's Exhibit J-1 for identification, more particularly in the bicuspid, the upper molar and lower molar areas, there is considerable amalgam replacement in these teeth, and I refer this exhibit to you for refreshing your recollection? A. Yes."

Mr. Fitzwilliam: May I have that exhibit, the one you are referring to I think is now marked 42?

(Continuing reading) "Q. In reference to the bicuspid area there is an amalgam filling with a

Deposition of Dr. Warren R. Johnson.)

Q. Nerve root filling, as well, in the case of Barbara Arramone, is that correct?

A. That is correct.

Q. And did you do that nerve filling as well as placing that amalgam on the bicuspid?

A. I did.

Q. Barbara Arramone had been a patient of yours for approximately fourteen months immediately after you entered into the practice or the profession of dentistry, is [93] that right?

A. That is right.

Q. Had she been continuously a patient for a period of about fourteen months in order to accomplish all of the amalgam work that was done, and the filling that is demonstrated in plaintiff's Exhibit 1 for identification?

A. Well, I didn't place all those restorations. I did quite a few, but I didn't place them all.

Q. In reference to the two central incisors of Barbara Arramone, was there a separation between the two central incisors before the happening of this occurrence? Can you recall and refresh your recollection from looking at these dental X-rays?

A. I would say it was a slight degree of separation.

Q. All right. Might I look at that again, please? You completed the replacement of the crowns within a period of about three months after she last saw you, is that correct? A. Yes.

Q. You mentioned something about a carious

(Deposition of Dr. Warren R. Johnson.)

condition existent in the mouth of Barbara Arramone when you first saw her in October of 1953?

A. Yes.

Q. Now that carious condition is known in layman's language as cavities, isn't that true? [94]

A. That is right.

Q. And the cavities that you speak of in her teeth, of course, were not caused by trauma; that is entirely a systemic condition that arises, depending upon the condition of the patient, is that true?

A. That is true.

Q. One patient might have a predisposition toward having carious teeth or cavities in the teeth whereas another will not? A. That is true.

Q. In the case of Barbara Arramone was there extensive evidence of caries, as I recall your testimony in chief, is that correct?

A. She had, I think, five carious lesions, or five cavities.

Q. And the five cavities that you observed were in the bicuspid areas, is that correct?

A. And the molar areas, yes, sir.

Q. Did she have extensive evidence of cavities and caries when you first attended and treated her upon your setting up your practice as a dentist?

A. She had perhaps slightly a few more cavities than the average adolescent would have.

Q. No extraction work was carried out at all, was there, Doctor? [95]

A. In regards to this case?

Q. Yes. A. Not by me.

Deposition of Dr. Warren R. Johnson.)

Q. And with the bridgework that you have done, you have got a good result, is that correct, Doctor, and she still has those bridges?

A. As good as we can hope for, yes.

Q. And the contour of her face and by reason of the fact that you have placed the two bridges, consisting of two teeth in the upper, and two in the lower, keeps the regular symmetry and form of the face?

A. As far as the dental arch is concerned, the symmetry has been restored. As far as the facial outline is concerned, I am not in a position to say.

Q. You are not a plastic surgeon?

A. That is right.

Q. After having completed the replacement of the pontic teeth, thereafter you carried out the work in connection with the repair of the cavities, is that correct? A. No, sir.

Q. You allowed the cavities to remain, is that what you mean?

A. No, sir. I repaired the cavities before I replaced the missing teeth. [96]

Q. And you completed the repair about three months after the happening of her coming to see you? A. You mean the total case?

Q. Yes.

A. The case was completed in early April.

Q. Of 1954, is that right? A. That is right.

Q. The completion of the crowns came about in about December of 1953, is that correct?

A. The cavities were done first. They were prob-

(Deposition of Dr. Warren R. Johnson.)

ably completed in a month; one bridge was completed in possibly another month, and then the next bridge was completed and then the crowns were constructed.

Q. Doctor, in relation to the bicuspid area that is demonstrated on Plaintiff's Exhibit J-1 for identification, and I refer you to the bicuspid area as demonstrated by the two X-ray films, isn't it true that the teeth as demonstrated therein on October 17, 1953, have a tendency to be somewhat malformed, in that they are at angles rather than in a straight position? Will you refer to that?

A. You see, in taking dental X-rays there is a certain amount of necessary distortion. In taking these pictures, due to the angulation of your X-ray machine and the placement of the film and the curvature of the arch which you will notice in this particular film, the bicuspid looks quite [97] angular.

Q. And slanted?

A. And the tooth in the film, in front of that, looks much more upright. And that is a common occurrence in dental X-ray films.

Q. Doctor, isn't there exhibited in the bicuspid area on both of these films a tooth which is known as a wisdom tooth that appears to be impacted as against the bicuspid?

A. There are impacted wisdom teeth in her mouth, yes, sir. She has four of them.

Q. All right, in reference to the impacted wisdom teeth, wouldn't they have a tendency to angu-

(Deposition of Dr. Warren R. Johnson.)

ate the bicuspid in the manner I have described
n the question put to you heretofore?

A. A very moot question. Probably has a normal bite, or did have a normal bite.

Q. Please answer the question, if you will.

A. Probably had a normal bite. No, I would have to answer the question that it wouldn't.

Q. So that would you say, Doctor, that the films as demonstrated in this Plaintiff's Exhibit J-1 for identification that I have in my hand are somewhat distorted?

A. No, not beyond any reasonable amount of distortion that is customary in any X-ray. That is why fourteen pictures are taken, to attempt to get undistorted views [98] of each tooth.

Q. You last saw Barbara in April of 1953 professionally, is that correct? Or, '54; I am sorry.

A. I examined her teeth today, with a mirror.

Q. Yes. But before today you had not seen her between this day and April of 1954, professionally?

A. Yes, professionally.

Q. The answer is yes, you didn't see her?

A. That is right.

Q. And when you examined her in April of 1954 the last time there was no evidence of trauma in the teeth surrounding the area that you have recapped or crowned? A. No visible evidence.

Q. No visible evidence of trauma at all? All right. So all vitality returned to the teeth by that time?

A. At that time, the teeth were normal and vital."

(Deposition of Dr. Warren R. Johnson.)

Redirect Examination

(Questions read by Mr. Nagel and answers read by Mr. Stutsman.)

“Q. Dr. Johnson, do you have an explanation to the question that Mr. Pause asked you with reference to the normalcy of Barbara’s bite?

A. Well, by all dental standards, I mean, from a regular test in wax, her bite is normal. Now, how much wisdom teeth will affect a person in later life is a debatable [99] question. Many people go through their whole life with impacted wisdom teeth and have a very normal bite; many people, if undue pressure is put on the adjacent teeth, should have the wisdom teeth removed.”

“I have no further questions, Dr. Johnson.”

Recross Examination

(Questions read by Mr. Fitzwilliam and answers by Mr. Nagel.)

“Q. Doctor, you produced here today X-ray films that were taken of Barbara Arramone’s mouth on or about Oct. 17, 1953? A. That is right.

Q. Did you ever cause to be made X-ray films of Barbara Arramone’s mouth after you completed the bridgework that you have described on the two teeth? A. No, sir.

Q. I take it, if you were alarmed by reason of your professional experience and education, in reference to her bite, or any impairment in so far as dental work is concerned, you would have taken X-rays of her teeth after October 17th?

(Deposition of Dr. Warren R. Johnson.)

A. That is right. We usually work on a six-months recall system, where those teeth would probably be X-rayed at that time.

Q. And they were not X-rayed? [100]

A. Not at that time, no, sir. Not recently.

Q. Nor have they been X-rayed since October 7, 1953? A. No.

"That is all."

Mr. Nagel: Your Honor, with the Court's permission, in order that they can better follow these two depositions we would like to introduce first of all these photographs that were——

The Court: They have already been introduced.

Mr. Nagel: I would like to pass them to the jury; I am sorry; as well as these X-rays.

Mr. Stutsman: They can hold them up, I believe.

Mr. Nagel: I think perhaps if I can give these photographs in the order in which they were placed into evidence to the jury, your Honor——

The Court: All right, you may pass them around.

(The exhibits referred to were passed to the jury.)

The Court: Ladies and gentlemen of the jury, we will take a brief recess at this time. You will remember the admonition of the Court heretofore given.

(Recess.)

The Court: The jurors are all present. You may proceed.

Mr. Stutsman: Dr. Bromberg. [101]

DR. WALTER BROMBERG

called as a witness for the Plaintiff Arramone,
sworn:

Direct Examination

Mr. Stutsman: Q. Doctor, for the record will you give us your full name, please?

A. Walter Bromberg.

Q. And are you a duly licensed practicing physician and surgeon in the State of California?

A. I am.

Q. Where is your office located, Doctor?

A. It is in Sacramento, at 922-29th Street.

Q. And where do you reside, Doctor?

A. In the City of Sacramento.

Q. Now, Doctor Bromberg, will you please relate the schools you attended and the degrees you earned prior to being licensed as a physician and surgeon in the State of California?

A. Yes. I am a graduate of the State University, College of Medicine of New York City; I graduated therefrom in 1926.

I was subsequently an interne, a medical and surgical interne at the Mt. Sinai Hospital in New York, and then resident neurologist at that institution.

Following that I was a junior psychiatrist at the Manhattan State Hospital on Ward's Island.

And then Junior and later a Senior psychiatrist at the [102] Bellevue Psychiatric Hospital for a period of some eleven years.

Prior to those years I was director of the psychiatric clinic for the Court of General Sessions,

(Testimony of Dr. Walter Bromberg.)

and for five years I was instructor in psychiatry at the New York University Medical college, and for four years assistant professor of psychiatry at the New York University College of Medicine.

During that time I was active in various clinics in New York City, and in 1937 I was qualified as an accredited neurologist and psychiatrist of the American Board of Psychiatry and Neurology.

Following that I came west in the beginning of World War II and worked for the Army, and later entered the Naval Service for a period of four years, finishing with the rank of Commander in the Medical Corps.

And then established practice in Reno, Nevada, as consulting neuro psychiatrist at the County Hospital in Reno and then Clinical Director of the Mendocino State Hospital of Ukiah, California, from which institution I came to Sacramento and have been in practice of neurology and psychiatry since 1951.

I have lectured at the University of California, Berkeley, in the spring term of 1949, have been active in Veterans Administration affairs, being consultant for outpatient treatment from 1948 to the present time, a member of various [103] psychiatric societies, a fellow of the American Psychiatric Association, a member of the group for the advancement of psychiatry, and have written 50 articles in various scientific journals, and have written three books on psychiatry and neurological problems.

(Testimony of Dr. Walter Bromberg.)

Q. Doctor, I take it from relating your qualifications that you specialize in some branch of medicine? A. I do.

Q. That is neurology and psychiatry?

A. That is right, sir.

Q. Now, Doctor, will you tell us what neurology is and psychiatry, what difference, if any, there is between those two specialties?

A. Neurology is the study of disorders of the nervous system, which includes the brain, its covering, the spinal cord and the nerves that run from the brain to the spinal cord and various parts of the body. For example, strokes or paralysis or any injuries of the brain would come under neurology.

Psychiatry deals with disorders of the mind and the mental functions, and the emotions and, of course, they overlap, because disturbances of the nerves or the brain would give mental symptoms, and very often mental symptoms give rise to actual nerve disturbances.

So that would cover the whole field of the nervous [104] system.

Q. And many times they refer to a doctor, who specializes, as you do, as a neuro-psychiatrist?

A. That would cover the whole field, neuro-psychiatrist.

Q. Doctor, do I take it also that in listing your qualifications you also are an M.D. or a regular doctor, but you specialize, is that right?

A. Yes, I am an M.D. and do general medical work at times.

Testimony of Dr. Walter Bromberg.)

Q. I see. But you are now restricting your practice to the specialty? A. Yes.

Q. Now, doctor, at what hospital do you practice?

A. At the present time I am on the staff of the Sacramento County Hospital and I am a member of the staff of Mercy Hospital, Sacramento.

Q. Now, Doctor, in the practice of your profession did you have occasion to examine and meet Barbara Arramone? A. I did.

Q. When did you first meet her, doctor?

A. I saw her first on the 30th day of March of this year.

Q. And how many times have you met her and talked with her and so forth, examined her?

A. I have seen her on three occasions. I saw her for a period of about five hours on March 30, 1955; I saw her for a period of two hours on April 1, 1955, and I saw her again for a short time today.

Q. Doctor, did you, during the course of the time that you saw her obtain a history from her?

A. I did.

Q. First, doctor, from whom did you obtain the history and from what sources?

A. I talked to the patient, I talked to her mother, her uncle and aunt, I studied the records of the San Joaquin Hospital, the hospital in Stockton, and I studied the depositions of the Dental Surgeon, Dr. Smalley; of Dr. Greeley, the facial Surgeon, and I read the reports of these various doctors, and letters.

(Testimony of Dr. Walter Bromberg.)

Q. Doctor, would you relate the history you obtained?

A. Yes. I made a very careful analysis of the girl's entire life, and I will try to put it in serial order.

I ascertained that this patient was born 19 years ago in Chicago, that she was healthy as a child, with the exception of childhood diseases such as measles; that her menstrual life started at the age of 13, that there were no abnormalities therein; that she was not what is ordinarily considered as nervous; she is considered a studious girl, she graduated from high school, she was a non-complaining, friendly type of individual.

I ascertained that she was regarded as a gay, happy child, interested in the usual school and high school activities; that she had girl friends, that she was active in her class, [106] she played basketball and was interested in all the things that girls of of that age could be interested in.

That she was a regular church-goer, that there was no evidence whatsoever of any personality trouble or nervous trouble during her early life.

On August 27, 1953, it was stated that she was injured in a motor car while she was asleep as a passenger on the right side of the car.

The important point from my point of view was the following:

That she was aware only of hearing a crackling of glass; that is, she knew she had fallen asleep and then became aware of the noise of crackling

(Testimony of Dr. Walter Bromberg.)

of glass and had a sinking feeling in her stomach, her head hurt, and was bleeding from the ear, and that she tried to get out and couldn't.

From then on her memory is very vague. She remembers only noises around her, and woke up in a hospital two days later.

At that time she was informed it was the San Joaquin Hospital in Stockton.

At that point she had pain in her right knee and had double vision; everything she saw looked double. Things were foggy, but she became aware of her surroundings about the second day after August 27, 1953.

She then was aware of pain in the left side of the jaw, [107] upper and lower, and a feeling of numbness on the left side of her face.

The stiffness in the knee continued to bother her. She had numbness of the left arm and a constant feeling of dizziness.

She experienced sensations of floating when she was not asleep lying in bed, and a constant thinking of the accident, and a re-experiencing of it; seeming like she was back in it.

A week later, she was transferred to a hospital in Fresno, and after a month returned to her home in Chicago.

Her complaints during this month and the next few months can be put under one head because they ran about the same.

Besides those I mentioned, the history stated that she had many dizzy spells, which increased

(Testimony of Dr. Walter Bromberg.)

upon her return to Chicago. At times she was observed to grope along the wall when she walked.

She complained of double vision. She was extremely nervous, being easily irritated, would fly off the handle, in her mother's words. Was quick to cry, was irritated by noises, slept very fitfully. At times she would moan while sleeping, "Oh, I am away up here." "Well, now, you think I am hurt, but I am not."

Her appetite decreased, she lost eight pounds immediately after the accident, and up to this point has lost 22 pounds, 22 or 24 pounds. [108]

Back in Chicago she returned to school where there was a noticeable slowing up in her studies and reduced participation in social activities in school. She had trouble concentrating, nevertheless they graduated her in February, 1954.

She then got a job with the telephone company and worked from March to August—September 1st of that year.

On the job she was fatigued, she was sleepy at the job, unable to sleep at night. She had constant frontal headaches, was depressed, numbness in the face continued. She was noticed to talk louder than usual. She lost her social personality, wouldn't go out, didn't care to contact her friends as before, had difficulty in concentrating, absent from work a lot, complained of trouble in breathing, and finally, at the end of August her boss asked her to resign because of inefficiency.

Further analysis of her condition, her complaints,

Testimony of Dr. Walter Bromberg.)

That is, the history revealed that she had been observed to laugh for no apparent reason, at things that were not funny to others. The laughter started and stopped suddenly. It was louder than she had laughed before.

Prior to the accident, as I said before, she was a typical high school girl, made good grades, interested, and had decided to become a dental nurse.

The history further stated that she was markedly forgetful. [109]

Recently she made telephone calls to four of her friends whose exchange number was different than that of her own. On each occasion she complained the numbers were busy, when it was discovered she had called her own telephone number.

On one occasion she was described as having left the house forgetting three objects, her keys, money and cleaning fluid. She came back for each object in turn; that is, she came back for the keys and forgot the money, came back for the money and forgot the cleaning fluid.

On many occasions when she has actually a poor memory she covers up by being what the mother describes as artificially gay, and finally said, "Something must be the matter with me."

She has been observed to stand moodily for long periods of time with her hands over her eyes.

She is irritable with her mother. At times she cries out about her scars and falls on the bed face down in anger.

Those who know her describe her as having a dif-

(Testimony of Dr. Walter Bromberg.)

ferent personality than she had before. She is withdrawn in manner.

At times she describes hallucinations. For example, she is quoted as having said, "I hear a bell ringing, mother. Do you hear something?"

She awakens from her sleep and says that lights are glaring at her, she just had been in a bombing raid, at one time, and another time she said that some object came close to her face from a distance far away and she wakes up frightened. [110]

At other times she described a sensation as if a cat was purring on her chest. When she woke up to grab it she found nothing was there.

Her present symptoms can be summarized as follows—they include those I mentioned and those that I got as being present the last few months: The most constant symptom is dizziness associated with severe headaches and dizzy spells as well as blackouts, which take a fraction of a second, but have appeared four or five times in seven months.

The next symptom is that she veers to the right when she walks.

Another symptom is headaches, present every morning, returning in the afternoon—present every morning, and persistent through the afternoon.

Another one is sensitivity to light.

Her eyes burn and tear.

Another symptom is insomnia.

It says other numerous types of disturbances. For example, she goes into a dream-like state which we call hypnogogic, which means half way between

(Testimony of Dr. Walter Bromberg.)

deep and awakening. At these times she has the various experiences I have described, such as hearing noises, ringing of bells, fear of animals, and is actually aware of these things, that is, she hallucinates them. She thinks they are there, but they are not there.

There is a constant buzzing in the ears. At times she [111] experiences a bad odor, such as dry blood, about her, and there is no such thing in her environment.

Further symptoms are that she day-dreams a lot and forgets what she is doing, cannot concentrate on what she is reading, and loses the thread of the conversation.

A further symptom is the numbness of the left arm, especially after sleeping, and weakness of that arm.

The nightmares I have described and the forgetfulness have already been described.

She makes odd mistakes, such as when called to the dining table she turns the chair away from the table as if it were facing the table, and discovers the mistake and makes a joke about it. At other times she is not so jocular, she becomes very upset and says, "What is the matter with me, why do I act this way?" And becomes emotionally unstable.

That is essentially the history I obtained.

Q. Now, Doctor, after obtaining the history did you make a physical examination of Barbara?

A. I did.

(Testimony of Dr. Walter Bromberg.)

Q. Will you relate your findings of that physical examination, please?

A. Physical examination discloses a girl of five feet three quarter inches in height, weighing 94 pounds stripped. The heart and lungs were essentially negative. The teeth showed: Prosthetic—that is, the artificial teeth in the [112] upper and lower left jaw. There were scars on the face, one a three inch scar on the left forehead to the hair line; a second over the bridge of the nose extending on both sides, essentially to the right; a third, a scar about three inches long on the left cheek; two or three smaller scars on the right cheek, and a two inch irregular scar on the chin.

There is also a slight deformity of the left wrist, indicating a fracture of the small bone.

In other respects she was essentially negative, with the exception of the nervous system.

Q. Doctor, did you also at that time perform a detailed neurological examination? A. I did.

Q. Now, will you please relate what those tests consisted of, and your findings in that regard?

A. The neurological examination is an examination of the nervous system as it functions; that is to say, you test the sensations, you test the balance, the muscle power, the reflexes, the coordination of the body in the various extremities; you test the function of the eyes, the nose, the hearing, the sight, the various senses, in other words, in great detail, and it is purported to bring out any disturbances in nervous system function.

Testimony of Dr. Walter Bromberg.)

Q. Now, what were your findings in that regard, Doctor?

A. My first examination, which I did in great detail, the [113] findings were as follows:

When the patient walked she veered constantly to the right when walking with her eyes closed. This was checked several times, and this indicates that the balance mechanism which lies inside the head in bone is out of order, because the patient, even though she wishes to walk straight, veers to the right without wanting to.

The next thing tested was what we call equilibration,—equilibration, which means balance and coordination, and here was a positive Rhomburg test, which simply means that the patient stands with feet together and eyes closed and after a while the patient veers or sways one way or the other.

A further test known as the pastpointing, in which the patient holds her hand in the air and brings it down to a given fixed point, and the arm veers away from the fixed point, and the patient is asked to look again and measure the distance carefully and try to correct it. In spite of the correction the arm wanders off. That is to say, the coordination for a point is disturbed.

This coordination is disturbed in the left hand more than the right, and the left hand swept to the right insensibly, which indicates that the balance of the left upper extremity was disturbed.

I then went on to examine the muscle power. The patient is right handed, of course, and therefore

(Testimony of Dr. Walter Bromberg.)

we expect a stronger [114] grip on the right than on the left, but in spite of that there was a definite weakness of the muscle groups of the forearm, the group that bring the hand up on the left side, in addition to the difference in strength between left and right in any right handed person.

There is also weakness in this muscle that rotates the head to the left.

I took each muscle group, I may explain, and tried to test each of the many, many muscle groups in the body to test which particular group was out of order. I am only giving you the positive findings now.

There is then a weakness in the muscle that rotates the head to the left, as well as the forearm on the left side. At the same time there seemed to be a decrease of muscle body, that is to say some possible atrophy in the left forearm as compared to the right.

We then examined the reflexes, which is the response to tapping the tendons in the various parts of the body. All of these reflexes were over-active, but the reflexes on the right side were more active than those on the left.

We took those at the ankle, at the knee, above the knee, on this side of the arm, this side, and behind the arm, at the elbow and at the joint. (Demonstrating).

The findings indicate that there is increased reflex activity in the right side of the body compared to the left [115] and a sign which we call pulmus,

(Testimony of Dr. Walter Bromberg.)

which means that when you tap the reflexes it doesn't stop, it continues indefinitely. This I found in the right foot.

The examination then proceeds to what we call abnormal reflexes; that is, the so-called Babinski's test and the Hoffmann's test. These were negative.

We then proceeded to test the sensation to pin-prick, pain, to touch, to vibration, and to heat and cold throughout the body. We find that the sensation is normal throughout the body with the exception of the head, except the left forearm, which had a band of decreased sensitivity to various stimulations.

The examination proceeds then to test the nerves of the head, which are the most important part.

First, the scars all show sensitivity to pressure, the scars I described on the face. Secondly, the olfactory nerve, which is the nerve of smell, showed some disturbance.

The patient, for example, smelled stale tobacco in a pipe as peppermint. That was a pretty obvious smell. So that I found that the nerves which bring the smell sensation back to the brain were somewhat disturbed.

Then we examined the ocular nerve, the nerve of the eye itself, and here we found no particular disturbance in the actual muscles that move the eye about.

The double vision which was described originally would [116] involve the eye muscles because the eyes are supposed to move synchronously, but

(Testimony of Dr. Walter Bromberg.)

there is no disturbance at this time which points to double vision.

Then we examined the sensations of the face, which is carried by a different nerve than those of the sensations of the skin of the body, and here I found a definite anesthesia, decreased sensation of the face, starting at the midline extending right to the eyebrow, covering the nose, upper lip, lower lip and face as far as the ear.

At the same time the sensation over the scars of the forehead were much more acute, and also the muscle on the left side is irritable, what we call myopathic irritability, namely, that we touch the nerve, it flicks of its own—touch the muscle, I mean—when you touch other muscles they don't flick that way.

We then go on to test the muscles that cause the face to smile and make various movements, and here we find that there is a paralysis in the muscles of the face on the left side from the eyes down, so that when the face opens it pulls back the teeth, the right side works and pulls the face out of symmetry. At the same time it twitches the muscles of that side in what we call a contracture, that is a tightening up of that muscle, because the nerve is fastened in that muscle.

I then examined the ears and the balance I told you about, [117] and the muscles of the tongue, of the throat, the various reflexes in the throat and the eyes and cheek.

And then three days later I carefully checked all

(Testimony of Dr. Walter Bromberg.)

the responses I got the first time on the second test, and that would conclude the neurological examination.

Q. Doctor, relative to these neurological findings, did you have an electroencephalogram taken of Barbara Arramone?

A. Yes; I then suggested that a brain wave test be made and that was carried out.

Q. What doctor took care of that, Doctor?

A. Dr. Howard Petzold in the Sutter Hospital in the city.

Q. And did you have the findings of that available to you?

A. I have here the report from Dr. Petzold from the Sutter Hospital.

Q. What was that report relative to the findings, whether they were positive or negative?

Mr. Fitzwilliam: If your Honor please, I suggest that that is immaterial. Dr. Petzold will be here, I assure you.

Mr. Stutsman: That is fine, if Dr. Petzold will be here.

Mr. Fitzwilliam: It is my understanding he will.

The Court: Well, at any event one doctor cannot testify for another any more than a lay person can testify for another. [118]

Q. Doctor, first I want to ask you about the paralysis of the face that you described, relative to the period of time that has elapsed since the lacerations, do you have an opinion based upon reason-

(Testimony of Dr. Walter Bromberg.)

able medical certainty as to whether that condition is temporary or permanent?

A. In my opinion—I have an opinion.

Q. What is your opinion, doctor?

A. My opinion is that it is a permanent paralysis of the left facial muscle.

Q. Doctor, you are familiar, are you not, with the mechanism of the injury that caused the lacerations and wounds that you described?

A. Yes, I got a detailed account of the actual injury beyond what I—that is, the actual mechanism of the injury.

Q. Will you relate that?

A. Well, briefly that she was in the right side of a car, on the passenger side of a car; that the car was struck on that side; that the point of impact was the door itself, and just a little bit ahead of it, and that her head struck the window, which was of unbreakable glass, nevertheless her head went through it, and that there was a second impact which apparently jammed the door post, a part of the door against her head the second time. The whole thing happened while the cars were going at fast speed, and the mechanism—it [119] was a direct blow, in other words.

Q. Doctor, considering your findings, considering the mechanism of the injury, do you have an opinion based upon reasonable medical certainty as to whether these abnormal findings that you have related in your neurological examination are related to the trauma involved?

Testimony of Dr. Walter Bromberg.)

A. Yes, according to everything I have heard, and what I have seen in this patient, I have an opinion that they are the result of the trauma described.

Q. Doctor, following this neurological examination then did you make a detailed and studied psychiatric examination of Barbara? A. I did.

Q. Now, will you relate what that consisted of, doctor, and your findings in that regard?

A. Well, a mental examination as opposed to a neurological one, has to do with the mind; in other words, the emotions, the reactions to questions, and our observation.

The patient was cooperative, that is to say she wished to answer. There was no hostility and no indication to my mind of faking or malingering.

The essential findings were that there was definitely—I will first discuss the emotional reactions:

The emotional instability which was described I observed. At one point, for example, I asked her a question about [120] what doctors had seen her, and she suddenly broke out into a prolonged and, you might say, unnecessary crying. That is to say, the question was not such that would elicit a responsive crying. And she was unable to stop for a few minutes. When I finally got her to stop she stated that the doctor had said that her scars were not so bad.

In other words, she has what I consider an emotional instability.

The second emotional point is that there is a cer-

(Testimony of Dr. Walter Bromberg.)

tain flatness, as we call it, which one perceives by experience underneath a certain amount of gaiety. In other words, she didn't have the normal reaction that a girl of her age, education and background should have on an emotional level.

So much for the emotions.

Now on the mental or intellectual side, it was obvious from my tests that she is a girl of average intelligence, perhaps a little higher. However, on a very detailed test of memory it was clear that she had definite memory defects.

I will give you an example: I asked her, for example, to count from 20 to 1 backwards. She then counted 21, 20, 19 and so on.

I asked her again, "Count from 40 to 20 backwards by twos." She counted 40, 48, 46, 44, 42, and suddenly laughed and said, "Oh, no," and she came back to 40. [121]

I asked her, for example, to count from 51 backwards by threes.

She answered, "51, 49, 47, 45," rather than "51, 48." I then asked her to count backwards from 100 by threes. Again she answered, "100, 97, 94, 91 and 89."

I repeated many times what is known as an aphasia test to see whether a person can carry a series of events in their minds correctly forward or backward, to see whether they have what we call mental attention, whether they can hold an idea long enough to remember, for example, that three from 51 is 48 and not forty-nine.

(Testimony of Dr. Walter Bromberg.)

These various aphasic tests indicate that her memory is poor because she has not the ability to hold on to an idea even for a few seconds.

This comes out—in the history I was given it comes out also at the examination at odd times as well as in the regular way. For example, there is one of the tests which says, “Give some”—“Give some maxims, slogans, such as, ‘One rotten apple will spoil the barrel,’ something of that nature,” and she add words, such as “One rotten apple will spoil the pot.”

Then you say, “Do you mean ‘barrel’?” “Oh yes, mean barrel.”

What I am trying to bring out is, the observations which relate to her so-called difficulty in retention of ideas [122] and memories, so-called aphasia, is hard to reproduce when I tell you about it but is gotten from observation by giving you various and different ideas and words and measuring her responses thereto.

Another test is to see if she can differentiate right from left, and you give the patient complicated orders, such as “Stand up, go to the mirror, touch the right side of the mirror with your left hand, and turn twice to the left and return to the chair.”

You start orders simply and you gradually increase them to more complex orders.

In that you find that she is unable to distinguish left from right when the orders are complicated enough.

Of course, you also standardize against what a

(Testimony of Dr. Walter Bromberg.)

girl should know of her age, and you don't give her impossible questions.

Also you check the reading and check her perception of the spoken word, and various other tests.

The net result of all this is that I found that she has a difficulty in what we call word symbol appreciation. That is to say, the word which means a certain thing, the word "paper" meaning this, is not retained in her mind long enough for her to use and repeat if she wants to use that in a sentence, and that her laughing, which was described as absurd, was to cover up this inability to [123] remember what she wants to remember.

In other words, she has a condition called aphasia, which we consider, have knowledge of, as an indication of injury to a certain part of the brain tissue. That would be the essence of the mental examination.

Q. Doctor, I notice that you related in your history about headaches, dizziness, blackouts, and irritability and nervousness. Does that have any medical significance to you, Doctor?

A. Yes, indeed.

Q. What were your findings in that regard, what do you attribute those to, those symptoms?

A. As I recall you said blackouts, dizziness, headache and——

Q. Nervousness, irritability, fatigue-ability, and so forth.

A. Well, the whole picture is very clearly that

(Testimony of Dr. Walter Bromberg.)

of a post-concussion syndrome, which means a condition resulting from concussion of the brain.

Q. Now, Doctor, is the brain concussion syndrome you have related, is that on a mental basis or organic?

A. That is due to actual bruises of the brain, jostling of the brain around inside the skull.

Q. And do you have any opinion as to whether she sustained any brain disturbance?

A. Yes, I found that she evidences of a shaking up of the brain inside the skull.

Q. Now, doctor, relative to the psychiatric aspect, what is [124] psychic trauma?

A. Psychic trauma would be a mental shock as opposed to a physical shock.

Q. What effect does that have upon a person, doctor?

A. Well, mental shocks vary from loss of a loved one to a minor fight with somebody, witnessing an accident, being in an accident; mental shock is anything which disturbs your mental equilibrium.

Q. Now, doctor, would the fact that a young lady 17 years of age having permanent disfiguring scars, would that have any effect upon her emotional behavior?

A. I should say it would, yes.

Q. And would you explain to us how that would affect a person, doctor, on a medical basis?

A. Well, obviously from an ordinary common sense point of view, a young girl at 19 expects to be married and live a full life, is immediately dis-

(Testimony of Dr. Walter Bromberg.)

turbed by facial disfigurement, because of the high value which is placed upon beauty and good looks in our society. And besides that it has a particular effect on a person's feeling of self-esteem. A person who has a disfigurement, a person born with a disfigurement, of course, has a low self-esteem, they are embarrassed, ashamed, they hide themselves, and so on.

A person who otherwise was attractive, who develops a disfigurement of the face would be all the more injured in [125] what we call their self-esteem value, develop inferiority feelings, phobias, fears, and that would be the psychic trauma effect on this particular type of case.

Q. In your examination and in your observations of Barbara has that had any effect on her?

A. I would say that a lot of the instability that was discussed, and some of which I witnessed, especially in relation to what the ordinary medical conversation was, would be the result of such a psychic shock.

Q. Is there any way that you or other doctors can assist her in meeting this problem?

A. Well, we have to retrain her personality to accept the defects, that would be the way to say it, and that is the process called "psycho-therapy", psychological treatment.

Q. Do you believe or feel, based upon reasonable medical certainty, that psycho-therapy is indicated for Barbara?

A. I would say definitely it would be helpful.

Testimony of Dr. Walter Bromberg.)

Q. And over what period of time do you think that should be applied, doctor?

A. Well, she is 19 now. I think that would be some five or ten years before she was really stabilized and able to accept this as part of her life, so I would think you would have to see her for a period of five years, or ten years.

Q. Do you believe that it could be entirely erased or assisted or how? To what extent do you think she can be [126] helped?

A. It is hard to say. It depends on what score she puts on her looks, and whether her personality is balanced enough to take a blow like that early in life. It is just as you see with veterans who have lost a limb in battle, they never lose the scar, the mental scar, but sometimes they adjust better than others, depending on the basic personality. You never can tell until you work with them over a period of time.

Q. Doctor, would the fact that a young lady at 17 had received such injuries make a difference from one older, or would it be about the same at different ages?

A. I would think it would be much more severe in a girl of 17 or 18.

Q. Is there a difference in the effect on the nervous system of a younger person and an older person?

A. The difference is the effect on the mental apparatus, the psychological effect.

Q. Do you have any opinion based upon rea-

(Testimony of Dr. Walter Bromberg.)

sonable medical certainty as to whether there will be any permanent psychological or emotional defects from this disfigurement?

A. I would say without doubt there will be emotional defects of a traumatic nature due to these disfigurements.

Q. You mean by that for the rest of her life, Doctor?

A. Yes, or certainly until she is of much more mature age than now. [127]

Q. Doctor, do you have any estimate as to what you would estimate psycho-therapy would cost over this period of time that you have indicated?

A. I would think she should be seen at least once a month by some competent psychiatrist, and that is a matter of five or six hundred dollars over a period of eight to ten years.

Q. Five or six hundred dollars. Doctor, is there anything else you can tell us from your findings and all your discussion here today as to what Barbara's future is, in other words, relative to all these factors that you have related?

A. Well, I will put it this way, if I may: She has a psychic trauma, the mental shock we have discussed; she has a paralysis of the facial muscles which is permanent; she has a probable injury to the brain, inside the brain, which accounts for the reflex changes, which may be stationary or which may progress. She has this concussion syndrome with blackout spells and personality deterioration, which will not recede, which may be stationary or

(Testimony of Dr. Walter Bromberg.)

may progress and get worse; and, of course, the
ars.

Mr. Stutsman: Thank you kindly, doctor. You
may cross examine.

Cross Examination

by Mr. Fitzwilliam:

Q. I just have a few questions, Dr. Bromberg.
The main basis of your psychiatric diagnosis is
the story in this case, [128] isn't it?

A. No, sir, I wouldn't say that. I would say——

Q. Well, Doctor, you never saw Barbara Arra-
one until last Thursday, as I get it?

A. That is true.

Q. Is that right? A. That is true.

Q. And did you know that although it has been
nineteen months since the accident she had never
seen a psychiatrist until she saw you?

A. I believe I read a report from a neurologist
in Chicago, a neuro-psychiatrist in that interven-
ing——

Q. Well, it is my understanding that Dr. Voss—
isn't it?

Mr. Nagel: There are two.

Mr. Fitzwilliam: Q. That he was a neurologist;
but at any rate, doctor, you certainly were advised,
weren't you, that at the most she has been merely
examined back there at Chicago by a neurologist or
perhaps on one occasion a psychiatrist, I don't
know. A. Yes, but if I may add——

(Testimony of Dr. Walter Bromberg.)

Q. Well, can you answer the question? Were you advised of that?

Mr. Stutsman: He said yes, counsel.

Mr. Fitzwilliam: Oh, pardon me.

A. But I would like to qualify that, namely, that in [129] reading Dr. Smalley's long report of a year or so contact I find that he handled the psychiatric aspects of it as I judged from his deposition.

Q. The family doctor that delivered her?

A. Yes.

Q. A psychiatrist?

A. He handled the psychiatric aspect of it.

Q. All right. At any rate, doctor, you knew you weren't going to treat her, you knew she lives in Chicago?

A. I know she lives in Chicago, yes.

Q. Yes. And you knew you weren't going to treat her?

A. I don't know, she walked in my office. I have just now been examining her.

Q. All right, doctor, who referred her to you?

A. Mr. Stutsman.

Q. Yes. She wasn't referred to you by a doctor, she was referred to you by her lawyer?

A. That is true.

Q. All right. And you certainly realized, doctor, didn't you, that the sole purpose that Mr. Stutsman had engaged you in this case was as a witness, not to treat her? That is true, you knew that, didn't you?

Testimony of Dr. Walter Bromberg.)

A. No, the whole purpose was to evaluate the case after examining her and conferring with him.

Q. And you understood that no such evaluation as yours had [130] ever been made in these nineteen months preceding her visit to you?

A. I didn't know, but I wasn't concerned. I just did my job.

Q. All right. Now then, you obtained the history, did you, with the careful noting of all of the history concerning her complaints in the same careful manner that you did the history about what part of her automobile was struck and all that?

A. Well, I may say I try to use care in everything I do.

Q. Yes. All right. Tell me, doctor, you have been here since 1951. Have you ever been hired by an attorney representing a plaintiff contending psychiatric changes where you haven't been able to find some psychiatric changes to testify to?

Mr. Stutsman: May I have that question read, Your Honor?

(Record read.)

Mr. Stutsman: If the Court please, we object to that question on the ground it is incompetent, irrelevant and immaterial, and does not tend to prove or disprove any issue in this case, and I believe it somewhat insinuates—

The Court: The objection will be overruled.

A. Yes, the answer is yes, I have had cases where there were no psychiatric findings.

Mr. Fitzwilliam: Q. People are contending that

(Testimony of Dr. Walter Bromberg.)

there are though, at any rate, and you find that there are not, [131] is that right?

A. I have cases which show normal mental functions, I have cases which show disturbed mental functions. Those that are normal the answer will be that they have no psychiatric findings.

Q. Well, we have met many times in court before, haven't we, doctor; you and I?

A. It has been a pleasure, yes.

Q. As far as Miss Arramone's age is concerned, doctor, at nineteen, the average girl has not yet matured to the state where she is developed into a definite set personality, has she?

A. No, I can't agree with that. I would say that girls have—and boys, too—have a personality that is quite set at 17, 16 or 17.

Q. Well, what I am getting at is this, doctor, that as you state, as she gets more mature, you say that she may overcome this emotional instability that you have told us about?

A. She may adjust herself to her injuries better than she has now.

Q. Yes. All right. Now then, this instability, as you say, can be caused by the scars, her mental outlook as to that would certainly improve if those scars were improved in the future contemplated plastic work, wouldn't it?

A. Well, there are two problems there: One is that the [132] original injury, that psychic trauma, can't be wiped out, and second is the continued

Testimony of Dr. Walter Bromberg.)

presence of scars. If they were improved it might have some effect, yes.

Q. Now, have you looked up the San Joaquin County Hospital record?

A. Have I looked at it?

Q. Yes. A. Yes, I have.

Q. And you have related that you were advised that there were two days after the accident before Miss Arramone was conscious, is that right? That is the history you obtained?

A. I said she had no memory.

Mr. Stutsman: Just a moment. Have you finished your answer, Doctor?

A. No. I said she had no memory for a matter of two days after the original injury, not a clear memory.

Mr. Fitzwilliam: Q. Do you recall seeing on the hospital record on August 28th, "Seems to be alert"? Do you recall seeing that?

A. I recall some other entries too. I wonder if I could look——

Mr. Fitzwilliam: Well, Doctor—may I request the witness to please answer my questions?

The Court: Yes, Doctor, just answer the questions and we will get along a little faster. [133]

The Witness: Your Honor, may I refresh my memory by reading the record.

The Court: Certainly. If you want to see the record you may.

A. (After referring to document.) Yes, "Seems to be alert."

(Testimony of Dr. Walter Bromberg.)

Mr. Fitzwilliam: Q. Do you recall on the same date a notation on the record, "Visited by her uncle. Did not seem to upset her."

A. Yes.

Q. All right. Now, as far as any brain damage is concerned, Doctor, such evidence as that on the day immediately following this accident would be considered as a good sign, wouldn't it?

A. Well, I note that a nurse wrote that, and I don't know whether it was a nurse or nurse's aid or how good her observation was.

Mr. Fitzwilliam: Well, if your Honor please, this hospital record has been introduced in evidence by the Plaintiff, and I think I am entitled to ask that question without the witness——

The Court: All right, doctor.

Mr. Fitzwilliam: Q. I am asking you if such evidence would not be a good sign as to the probable absence of any great brain damage?

A. I would have to answer that it depends upon the reliability [134] of the observer, so I will have to really give you a qualified answer.

Q. The notations on the record, doctor, the following day marked "August 29th", "appears to be quite alert, very cooperative, no complaints other than penicillin shots," wouldn't such a circumstance, doctor, if it existed, be a good symptom or a good sign to you as a doctor as regards any possible brain damage?

A. Well, no, because sometimes head cases are unusually cheerful, more cheerful than they should

(Testimony of Dr. Walter Bromberg.)

be under the circumstances, have what is known as Euphoria, which is a definite condition of abnormal cheerfulness.

Q. You think those things would be a bad sign?

A. Abnormal cheerfulness, yes.

Q. Well, no. "Appears to be quite alert, very cooperative, no complaints, other than penicillin shots." Do you think that they would be bad symptoms?

A. I really couldn't judge. It would depend on so many other factors.

Q. Reading, I guess, Doctor, requires a certain amount of concentration, doesn't it?

A. I missed the first few words of that question.

Q. What?

A. I missed the first few words of that question.

Q. I say reading, reading,— [135]

A. Reading, yes.

Q. Reading requires a certain amount of concentration, doesn't it, doctor? A. Yes.

Q. And I suppose on your test of counting backwards by threes and so forth, you find that some people are just a little bit more mathematically talented than others, don't you?

A. It makes no difference, it has all been calibrated and discounted to start with. We don't measure mathematic ability, we measure function of the mind with numbers.

Q. Do you think that anybody who is asked to

(Testimony of Dr. Walter Bromberg.)

count backwards from 51 by threes and they count 51, 49, 48,—they are emotionally unstable?

A. I didn't say—I wouldn't say that, and I didn't say that.

Q. I am asking you if that would be your contention, that people that might not be able to count backwards in leaps of threes might not necessarily have any emotional disturbance at all, is that right?

A. Oh, if you say disturbance, I would say no, it is not right.

Q. You were given a history of a slowing up in studies, were you, when she returned to high school?

A. On return to high school yes.

Q. Were you told, Doctor, that although she missed almost [136] two months of school she graduated from high school in the following February?

A. I was told they gave her a diploma as a matter of neurological aid. They gave her the diploma.

Q. They just gave it to her, that was your understanding?

A. That was my understanding.

Q. And for her height, Doctor, I think you told us it was 5 $\frac{3}{4}$ inches, she appears to be a reasonably well nourished young lady, doesn't she?

A. I would say she carries less weight than she should.

Q. Does she appear to you to be a reasonably well nourished lady right now in proportion to her height?

A. She is not mal-nourished, I will say that.

Q. In this Romberg test that you told us was

(Testimony of Dr. Walter Bromberg.)

positive, that is, closing your eyes and putting your heels together and holding your arms out in front of you, something like that, isn't it? A. Yes.

Q. And then if you start to weave a little bit, why, that is a positive reaction, is that right?

A. Not exactly, no.

Q. Well, what is a positive reaction?

A. Well swaying and incoordination.

Q. And it is not uncommon to find people to have a positive reaction to that? [137]

A. People who are nervous do commonly have that reaction.

Q. You tested all the reflexes, did you, Doctor?

A. Yes.

Q. Did you find, as you told us, that people have——

Mr. Stutsman: Speak louder, please?

Mr. Fitzwilliam: Oh, I am sorry.

Q. You find, you told us, that people have or sustain this emotional instability from various causes at various times, don't they, a loss of loved ones and such, you were telling us, and disagreements and fights and so forth will cause an emotional instability?

A. In discussing psychic trauma I believe I talked about that. I was asked what is mental trauma.

Q. And those things can be created by any one of those causes and then as time goes on, why, in the ordinary course of events people get over them, don't they?

(Testimony of Dr. Walter Bromberg.)

A. It depends on the amount of trauma, what it means to the person. Sometimes they do and sometimes they don't.

Q. Wouldn't you think good therapy, Doctor, for Miss Arramone, would be a job?

A. That would be a good thing for her to have.

Q. And that will tend to get her mind occupied on things that would maybe give her some incentive and some interest in something——

A. I agree.

Q. ——Is that right? [138]

A. Definitely.

Mr. Fitzwilliam: I think that is all.

Redirect Examination

By Mr. Stutsman:

Q. Just one question, Doctor. With reference to these tests that Mr. Fitzwilliam made reference to, like counting numbers and the swaying, and all the various things that you related, are those tests, or are they not recognized tests in the medical profession?

A. Oh, yes, definitely recognized.

Mr. Stutsman: That is all. Thank you.

Mr. Pacht: We have no questions, your Honor.

Mr. Stutsman: Thank you, doctor.

If the Court please, we have the deposition of Dr. Smalley, if you want to proceed.

The Court: Well, I am going to take the afternoon recess. We couldn't possibly finish it today.

Mr. Fitzwilliam: Your Honor, before we ad-

ourn, might I suggest we have a short session in chambers, if we may?

The Court: Well, I am going to excuse the jury.

(Thereupon an adjournment was taken until Thursday, April 7, 1955, at 10:00 a.m.) [139]

Thursday, April 7, 1955—10:00 a.m.

The Clerk: Case No. 7007, Arramone vs. Prowse, and Case No. 7004, Brunkala vs. Prowse, further trial.

The Court: The jurors are all present. You may proceed.

Mr. Nagel: Your Honor, with the Court's permission we would like to read Dr. Smalley's deposition into the record.

The Court: What is his first name?

Mr. Nagel: It is Dr. Charles J. Smalley, and the deposition was taken on the 3rd of November, 1954, in Chicago.

DEPOSITION OF DR. CHARLES J. SMALLEY

(Thereupon the reading of the deposition of Dr. Charles J. Smalley was proceeded with, Mr. Nagel reading the questions and Mr. Stutsman reading the answers:)

"Q. Dr. Smalley, will you give us your full name, please?

"A. Charles J. Smalley.

"Q. Are you, Dr. Smalley, a duly licensed and

(Deposition of Dr. Charles J. Smalley.)

practicing physician and surgeon in the State of Illinois? "A. Yes.

"Q. Dr. Smalley, where do your — where are your offices located?

"A. 1150 North State Street.

"Q. That is here, in Chicago?

"A. In Chicago.

"Q. Dr. Smalley, would you be kind enough to relate the schools you have attended and the degrees you have earned [140] prior to being licensed as a physician and surgeon?

"A. Bachelor of Science degree, Loyola University, Master of Science degree in the Post Graduate School, Loyola University, in Physiological and Chemistry, M.D., from Loyola University. I had a teaching fellowship in Loyola Medical School from 1926 to 1928.

"Q. Dr. Smalley, where did you intern?

"A. St. Joseph's Hospital.

"Q. And that is here, in Chicago, is it?

"A. In Chicago.

"Q. Where did you commence the practice of medicine?

"A. In Chicago, at 1150 North State Street.

"Q. And when did you commence it?

"A. 1933.

"Q. And have you been continuously in the practice of medicine since that time?

"A. Since that time, at the same address.

"Q. Dr. Smalley, do you belong to any medical societies?

Deposition of Dr. Charles J. Smalley.)

“A. Yes, the American Medical Association, Chicago Medical Society, Society of Industrial Surgeons and the American Railway Surgeons Association.

“Q. In what hospitals do you practice in Chicago?

“A. St. Joseph’s Hospital, primarily. I attend various hospitals, among them, Augustana, Wesley, Passavant, Alexian Brothers. But the bulk of my work is at St. Joseph’s Hospital. [141]

“Q. Dr. Smalley, in the practice of your profession, did you have occasion to and did you examine and treat Barbara Arramone?

“A. Yes, I did.

“Q. Well, when did you first see Barbara Arramone in the practice of your profession?

“A. Well, at the time she was delivered.

“Q. In other words, you were the attending physician at the time she was born, is that correct?

“A. That is right, I delivered her. That is correct.

“Q. Have you been the family physician since that time? “A. Since that time.

“Q. Now, did Barbara Arramone see you sometime in the latter part of the year 1953?

“A. Yes, she did.

“Q. And upon what date did she see you?

“A. Well, I saw her several times in 1953. The last date previous to her seeing me after the accident was in July of 1953.

“Q. And then you saw her sometime after she

(Deposition of Dr. Charles J. Smalley.)

claims to have been in an accident, is that correct?

“A. That is right. I saw her on October 9, 1953.

“Q. That was October the 9th?

“A. October 9, 1953.

“Q. Now, Dr. Smalley, did you at that time obtain a [142] history from Barbara Arramone?

“A. Yes, I did.

“Q. Will you please relate the history that you obtained?

“A. She stated that on or about the 27th of August, 1953, she was involved in an automobile accident, at which time she was asleep, as I remember, in the front seat of the automobile and had no warning of what was occurring until she found herself outside of the car. She was taken to a hospital, locally, where she was treated. She had suffered severe lacerations of the head and the face, and various other injuries which, at the time I saw her, I obtained only from her history.

“Upon examination, the scars from the accident were extremely evident, especially on her head and face, and various other places.

“She complained of headaches at the time, nervousness, restless sleep, painful left wrist, pain in her right knee, and complained, also, that these scars were tender and painful and were very annoying, due to their disfigurement; she also complained of painful mouth and teeth, and inability to maintain certain expressions, and to chew well; the reason for that was apparent, after examination.

(Deposition of Dr. Charles J. Smalley.)

“Q. Dr. Smalley, did you, yourself, make a physical examination upon this occasion that you saw Barbara? “A. Yes.

“Q. And would you please relate the findings of that [143] physical examination?

“A. On examination, she had numerous lacerations of the face and head, forehead, bridge of the nose, cheeks, and one extremely deep laceration on her left cheek. On palpating these, they were tender and sensitive. The laceration on the left cheek was of considerable concern because it apparently involved a nerve, and in a further examination it was evident that one of the branches of the facial nerve was obviously cut at the time and she was unable to perform certain functions of these muscles, such as grimacing and smiling, and that perhaps was one of the reasons why mastication was painful to her.

“Other examinations were made. She complained of tenderness and pain in the left wrist, and on examination it was found to be quite tender, and there was a little nodule present over the ulna; the suspicion of a fracture was evident, and a picture was made in my office and indicated a chip fracture of the bone of the wrist.

“Her right knee was extremely painful and there was a scar that had been recently sutured, and healed, and the tenderness and pain there was presumed to have been from the scar. Later on, however, after the scar healed, she had pain, and is having pain in that knee today.

(Deposition of Dr. Charles J. Smalley.)

"She told me in her history that she had been bleeding from the ear, and I had asked her if skull pictures had [144] been made, any X-rays of her skull, and to her knowledge, there hadn't been, so I made pictures of her skull and found no evidence of any bony pathology.

"Q. Dr. Smalley, concerning the X-rays of the skull, you stated that there was no evidence of bony pathology; does that exclude the possibility of brain damage?

"A. Oh, of course not.

"Q. Have you completed the physical findings that you made upon this occasion that Barbara Arramone saw you, Dr. Smalley?

"A. No. Generally, there was considerable nervousness, tension was elicited, that is, nervous tension; she seemed to have a little tic of the face, which is an involuntary jerking of the muscles.

"Her blood count was made and it was found she had a secondary anemia; the figures were, 79% hemaglobin, 3,750,000 red blood count; white blood count, and the rest of it, were within normal limits. Anything less than four and a half million certainly is on the suspicious side of anemia, and 3,750,000 would very definitely put her in that class. Certainly the extent of the lacerations would indicate that she had lost considerable blood, and it was presumed that her anemia was the result of the loss of blood.

"She was rather quite unstable and broke in tears on a couple of occasions, especially during the ex-

(Deposition of Dr. Charles J. Smalley.)

examination in [145] the X-ray room. The skull examination required her putting her face down on the X-ray plate and it was sensitive, and she burst into tears and complained how ugly she looked.

“Q. Dr. Smalley, you have given us the results of this blood count; did you take that blood count yourself?

“A. My technician took the blood count, under my supervision.

“Q. The technician works in your office, does she? “A. That is right.

“Q. She has training in that field, Doctor?

“A. Yes, she is a registered technician.

“Q. Were all of the acts that she performed within your offices and under your direct supervision and control? “A. That is correct.

“Q. To what, in your opinion, was the anemia attributable, Doctor?

“A. Loss of blood.

“Q. Doctor, did you notice anything unusual about the teeth of Barbara Arramone?

“A. Yes, yes, she had broken and missing teeth, and she was currently going to a dentist for dental repair, or had made an appointment. There were four teeth involved in this, and many of her teeth were loosened, but four were definitely broken.

“Q. Doctor, upon this occasion that Barbara saw you, did [146] she appear to be suffering pain?

“A. Yes.

“Q. Would you relate to us what you observed, in further answer to my question?

(Deposition of Dr. Charles J. Smalley.)

"A. Well, comparing her to when I had seen her previous to this trip that she had made, she had lost considerable weight, she was extremely nervous compared to her former behavior, and the pain, in motion,—now, in examining the wrist, for example, extended and flexed, abducted and adducted, would cause considerable pain, especially on flexion and adduction. The knee was tender on feeling, or on palpation, and on motion of the joint, especially flexion, caused considerable pain. And there was pain over what is known as the patella, or kneecap. A scar, a recent scar was slightly above that area and it was presumed that the healing that was taking place and scar tissue that was growing in was involved in the pain.

"The scars on her face were, naturally, tender, as they would be, after recent suturing, and so on.

"She complained of some pain in the chest, but on examination of her chest, there were no positive findings.

"Q. You have stated, Dr. Smalley, that you did take X-rays of the wrist, as well as the skull, is that true? "A. That is right.

"Q. And those X-rays were taken where? [147]

"A. In my office.

"Q. And do you have X-ray equipment there?

"A. I do.

"Q. What kind of equipment do you have?

"A. It is a Mattern machine.

"Q. What did you do, as a physical thing,—

Deposition of Dr. Charles J. Smalley.)

First of all, these X-rays you have, are they the X-rays of Barbara's wrist and skull?

"A. That is right.

"Q. What, as a physical, practical thing did you do, or any of your assistants do, to assure yourself that these are Barbara's films?

"A. The films are marked with a marker which is put on at the time of the films being made.

"Q. May we have that in the record, that there is a code number used by you, Doctor, in identifying the X-rays as being those of Barbara Arrandone?
"A. That is correct.

"Q. I am interested, at the moment, in the wrist situation; may we have those?

"A. Now, at the time she appeared, she was very excited and very upset and the primary—she had just come from a hospital where she had been treated and had been under observation, and the primary concern at the moment was quieting her down. She was put under sedatives and anodynes, and iron and [148] liver were prescribed, to be taken orally.

"I saw her subsequently. These pains persisted, and I got more of the history, such as the bleeding from the ear, and so on. So, the pictures were deferred until she was in a more stable condition to go through all this procedure. This is the picture of her wrist.

"Q. Doctor, the response that you have just given us, that is in evidence, was that a further part of your physical examination?

(Deposition of Dr. Charles J. Smalley.)

"A. That is correct.

"Q. Now, this X-ray that we have here, may we have this introduced into evidence as Plaintiff's Exhibit next in order, marked S-1, for identification?"

Mr. Fitzwilliam: May we have that?

Mr. Stutsman: Is there a shadow box in court, your Honor?

The Court: There is one available.

Mr. Nagel: There is one available.

Your Honor, may we have this X-ray film that has been referred to in the deposition as——

The Court: Plaintiff's Exhibit 43 for the Plaintiff Arramone.

(The X-ray film referred to was marked Plaintiff's Exhibit No. 43 for the plaintiff Arramone.)

"Q. Dr. Smalley, I show you what appears to be an X-ray film that has upon it—— [149]

"A. Do you want me to stand over here by the window?

"Q. Is that your name, 'Charles J. Smalley'?

"A. That is right.

"Q. And what else is there on that film in the way of identification?

"A. The code number 772 L, 'L' indicating the left wrist. This piece of bone——

"Q. Just a moment, Dr. Smalley. Is that Barbara Arramone's——

"A. That is Barbara Arramone's.

"Q. Is that her wrist, in two different forms?

(Deposition of Dr. Charles J. Smalley.)

“A. In two different positions.”

Mr. Nagel: At this moment, I am asking that this X-ray be introduced into evidence.

Mr. Fitzwilliam: I have no objection.

“Q. Well, Doctor, first of all, will you tell us what that X-ray shows?

“A. The X-ray shows a chip fracture of the distal portion of the ulna bone.

“Q. Can you circle that portion that you have just described and not interfere with anyone else looking at or properly examining the pathology?

“A. Yes.

“Q. Would you so mark that?”

Mr. Fitzwilliam: And the record shows that the witness [150] marked the X-ray.

“Q. Doctor, you have described the pathology shown on this X-ray as being a chip fracture of the ulna, is that correct?

“A. That is correct.

“Q. Now, this X-ray film that you have here, does that show any damage to the nerves, muscles, ligaments, tendons, or soft tissue?

“A. No.

“Q. Have you taken any X-ray films of Barbara since the occasion that this X-ray was taken of her wrist, Doctor?

“A. No films have been made since.

“Q. You have seen Barbara Arramone professionally how many times from the first visit, after her visit to California, that you have just described, Doctor?

(Deposition of Dr. Charles J. Smalley.)

“A. I have seen Barbara Arramone eighteen times.

“Q. On those eighteen visits, did they have anything to do with the injuries that you have testified to? “A. Definitely, yes, sir.

“Q. When did you last see Barbara professionally, Dr. Smalley?

“A. On the 14th of October, of this year.

“Q. Did you examine Barbara at that time?

“A. That was a pre-operative examination, preparatory to her going to the hospital for plastic surgery for the *removal* [151]

“Q. What was the condition of Barbara's wrist, Doctor, on this last occasion that you saw her professionally?

“A. It was still tender and painful.

“Q. Was the use of her wrist any different from—this was her left wrist, wasn't it?

“A. That is correct.

“Q. Was it any different, in any way, in your opinion, Doctor, from the right wrist?

“A. Yes.

“Q. In what regard was it any different?

“A. There was weakness in the use of the wrist, weakness of the hand, compared to the other hand. There was pain on motion, both passive and direct motion.

“Q. Pain is a subjective complaint, as you doctors call it?

“A. Yes, it is a subjective complaint, but it is evidenced many times by a wince of the face, or an

(Deposition of Dr. Charles J. Smalley.)

objection, or an expression of "ouch," something of that sort.

"Q. On the wrist here, did you observe or find any objective findings that were corroborated——

"A. Tenderness on pressure over the area, as outlined earlier, which is the ulna, which is on the little finger side of the hand.

"Q. Dr. Smalley, with reference to the wrist, do you have an opinion, based upon reasonable medical certainty, as [152] to the future outlook of this wrist?

"A. Yes, she will probably always have some difficulty, some pain, there may be some permanent weakness, but to what extent, it would be impossible to guess. But these things most frequently leaves some little damage as permanent. There has been a loss of bone, small, it is true, but there has been some displacement.

"Q. When you say 'displaced fragment,' what do you mean by that?

"A. The fragment is not in its original position, where it is still attached to the bone.

"Q. Doctor, you have testified that Barbara complained of headaches when you first saw her; will you tell us, first of all, did those headaches continue?

"A. The headaches have continued.

"Q. What was the situation, medically, with reference to Barbara's headaches upon the last occasion that you saw her professionally?

"A. She complained of headaches.

(Deposition of Dr. Charles J. Smalley.)

“Q. From your knowledge of Barbara, and her history, do you know to what those headaches are attributable? “A. Not positively.

“Q. Doctor, do you have an opinion, based upon reasonable medical certainty as to the future outlook of Barbara’s knee?

“A. Again, as with the wrist, there has been trauma, as [153] evidenced by the scar. How deep the original laceration was, I have no way of knowing, because I didn’t see it at the time, but the stitches marking—but the stitch marks were still evident when I examined her the first time, so I presume it was sufficiently deep to require suturing; the skin over the knee in that area is thick enough, but there is very little tissue below it in the way of muscle or fat, and it is quite possible that the capsule of the joint and the ligaments surrounding it were injured at the time, perhaps lacerated, scar tissue growing into those ligaments can cause a painful and sensitive knee.

“Q. Doctor, did you prescribe any medication for Barbara, for her headaches, during any of the time that she saw you these eighteen visits that you have described?

“A. Yes, I prescribed medication for her headaches and nervousness, and also for anemia.

“Q. You treated Barbara, of course, and have so testified, prior to the time she complained of having been involved in an accident?

“A. That is correct, yes, sir.

Deposition of Dr. Charles J. Smalley.)

“Q. You have described the damage done to the left cheek, Doctor, have you not?

“A. That is right.

“Q. Do you have an opinion, based upon reasonable medical certainty, as to whether that damage is permanent in nature? [154]

“A. Where nerves are severed, it is usually permanent.

“Q. My question called for a ‘yes’ or ‘no’ answer.

“A. Yes.

“Q. And what is that opinion?

“A. Nerves regenerate from the ganglia which is located in or adjacent to the spinal cord and they regenerate out to the point of severance. It is common practice, in cases of intractible pain, to sever the nerve. We collapse a lung by severing the phrenic nerve and paralyze that muscle, which remains permanent. There is a procedure which just crushes the nerve, which this is not the case. In my opinion, the nerve was severed.

“Q. And is that severing of the nerve a permanent something, Doctor?

“A. Yes.

“Q. Doctor, did you observe in the recent past the condition of Barbara’s right eye?

“A. That is an observation that was made just recently and it is a complication of this whole situation; apparently as scarring has occurred there has been either some damage to a nerve that supplies the upper lid or it was originally damaged and then degenerated. Now, degenerating nerves require considerable time. Her eye is not closed

(Deposition of Dr. Charles J. Smalley.)

completely when in repose, as in sleep, and this has been observed by members of her family. She has had some irritation of the [155] eye because the normal moisture hasn't been there, because she has been unconscious during sleep and unable to blink her eye and keep the conjunctiva and cornea moist.

"Q. Dr. Smalley, would you give us your diagnosis of Barbara Arramone, if you made such, that resulted from your examination of Barbara upon her first visits to your office?

"A. As a result of her examination, following the accident, I made a diagnosis of secondary anemia, probably due to loss of blood, extensive disfigurement and scarring of her face—extensive scarring of her face with evidence of paralysis of a facial nerve, broken and missing teeth, traumatic arthritis of right knee, chip fracture of left wrist, extreme nervousness and psychotic tendencies.

"Q. And, Dr. Smalley, has that diagnosis changed any up to the time that you last saw Barbara?

"A. I will not have to comment on the facial disfigurement as the resut of that being in the hands of the plastic surgeon.

"The headaches have persisted to this date; she still has pain and there is evidence of arthritis of the wrist, also of the knee; nervousness has remained about the same; there is definite evidence of personality changes in her makeup which, hav-

Deposition of Dr. Charles J. Smalley.)

ing known her since birth, is something foreign to her.

“Q. Dr. Smalley, you have made mention of personality changes; what were those changes?

“A. The changes are composure, she has evidenced emotional instability as a result of fear and worry and concern about her appearance. She has become irritable. She has lost appetite. There has been a seventeen pound loss in weight over the period since before the accident to the present time. The anemic picture has improved.

“Q. I will ask you to what are those personality changes attributable?

“A. I would say a psychic shock and a concern over her personal appearance, as to what her future was going to be.

“Q. Dr. Smalley, do you have an opinion, based on reasonable medical certainty, as to any treatment that may be reasonably required in the future?

“A. Yes.

“Q. And what, in your opinion, is such treatment, if there is any reasonably required?

“A. Well, continuation of plastic surgery to obtain the most effective result with the least amount of permanent disability and deformity; continuing treatment relative to the wrist to determine the progress of this piece of bone; also, continued examination of this traumatic knee which has been arthritic, and very definitely, investigation and observation of her psychic make-up. This has been suggested to the patient several months ago.

(Deposition of Dr. Charles J. Smalley.)

“Q. Did you prescribe such treatment, Dr. Smalley? “A. Yes.

“Q. Doctor, you have described Barbara’s headaches; do you have an opinion, based upon reasonable medical certainty, as to whether these headaches are a permanent something? “A. Yes.

“Q. And what is your opinion, as a physician and surgeon, as to the future outlook concerning these headaches that Barbara has?

“A. In cases where there has been face and head injuries, even though there has been no evidence of fracture, it is nothing common to have had some brain trauma, either in the form of actual bruised brain tissue, or even small hemorrhages that frequently go without being picked up on examination; those effects would be permanent and it is very likely that the pattern which has not changed, as far as the headaches are concerned, since this has been over a year, would continue.

“Q. Doctor, what, if any, effect has the time element? You have just stated it has been some fourteen months since this accident took place; what effect, if any, does this time element have upon your opinions you have just given?

“A. It is quite significant in that usually anything that is due to a—anything of a temporary nature would have been relieved long before the expiration of the time we are referring to. [158]

“Q. Dr. Smalley, what have been your charges for treating Barbara Arramone to date?

“A. The charges to date have been \$160.00.

(Deposition of Dr. Charles J. Smalley.)

“Q. And those charges, were they all chargeable to the condition you have just related?

“A. Yes.

“Q. Are those charges, in your professional opinion, reasonable charges?

“A. Yes, I think so.

“Q. Now, do you have an opinion, based upon reasonable medical certainty as to the charges that you would make for any treatment that you may give Barbara in the future?

I would like to have you, in answering that question, disregard any charges that may or may not be made for plastic surgery or dental work, but in answer my question I would suggest that you merely evaluate and give us your best judgment as to your charges that you would make if you continued treatment, yourself, in the manner that you have testified to here.

“A. Certainly a condition with a continuing problem may require considerable treatment; that treatment may extend over a period of many years. Treatment, also, as I have indicated earlier, continued investigating, if other things come up or are found, the cost of which treatment would certainly be variable because outside help might be necessary, in the way of a neurologist or psychiatrist, whose fees I couldn't estimate. [159] My own fees, let me say that perhaps \$100.00 a year would be the ordinary general fee, and the length of time would be dependent upon the response.

“Q. Dr. Smalley, that estimate of \$100.00 a year,

(Deposition of Dr. Charles J. Smalley.)

is that, in your opinion, as a physician and surgeon, reasonable?

"A. That is quite reasonable. And may I add that this is my fee only, and would not include the cost of medications or prescriptions, or other treatments that might be necessary outside of my own jurisdiction.

"Q. And did your charges include a psychiatrist's charges, for example? "A. No.

"Q. Or a neurologist's charges? "A. No.

"Q. Or a plastic surgeon's charges?

"A. No.

Mr. Nagel: I have no further questions of Dr. Smalley at this time."

Cross Examination

(Questions read by Mr. Fitzwilliam, answers by Mr. Stutsman.)

"Q. Dr. Smalley, you saw Barbara Arramone when previous to October 9 of 1953? Do you have your record there?

"A. It was in July. I don't have the exact date.

"Q. Do you have your office records with you in connection [160] with the treatment that you administered to her in July of 1953? "A. No.

"Q. How long had she been under your care before July of 1953? "A. Since her birth.

"Q. I see. And for what had you treated her immediately before July of 1953?

"A. She was in for an acute upper respiratory, in other words, a cold.

(Deposition of Dr. Charles J. Smalley.)

“Q. And how long had she been under your care immediately prior—before July of 1953?

“A. Since her delivery.

“Q. And that would be how many years?

“A. Eighteen years; approximately eighteen years.

“Q. Has she been continuously under your care for this period of time?

“A. Continuously. I was her doctor during those years and saw her perhaps on an average of two or three times a year early in her infancy and childhood.

“Q. Did you ever have her hospitalized before July of 1953 for any reason at all?

“A. For tonsillectomy.

“Q. Now, Doctor, after October 9, 1953, I believe you said that you had occasion to attend and treat her professionally [161] in connection with the alleged injuries that she sustained at about eighteen different occasions, is that correct?

“A. That is right.

“Q. And the last time that you had occasion to attend and treat her, other than examine her, was as of what date, sir?

“A. As of the date I mentioned earlier in this examination, for her pre-operative examination. I treated her by prescribing a sedative in addition to that which she was taking.

“Q. When before October 14, 1954, had you had occasion to attend or treat her?

(Deposition of Dr. Charles J. Smalley.)

"A. I believe that was approximately a month prior.

"Q. And the eighteen professional visits that she had with you and while under your care extended from October 9, 1953, to October 14th of 1954, is that correct?

"A. That is correct.

"Q. Now, within the first month after October 9, 1953, can you tell me how many times you attended and treated her in that span of time?

"A. In that span, there were five or six treatments.

"Q. And in November of 1953, how many times did you see her professionally and in connection with the alleged injuries?

"A. I believe there were two treatments in November. [162]

"Q. And I take it, then, thereafter, Doctor, you saw her about once a month, is that correct?

"A. Approximately.

"Q. Now, you have mentioned that you had occasion to have x-rays taken of Barbara Arramone's upper extremities, and that was the left arm, is that correct? "A. Left wrist, specifically.

"Q. The wrist of the left arm?

"A. That is correct.

"Q. Now, you have already testified that there was a chip fracture in the ulnar bone, is that correct? "A. Correct.

"Q. Would you say that that was in the styloid process of the ulnar bone?

Deposition of Dr. Charles J. Smalley.)

“A. That is correct.

“Q. And in looking at this x-ray film, the chip a very small chip, isn’t that true, Doctor?

“A. It is a chip.

“Q. There isn’t any tear of the periosteum around the ulnar bone or the styloid process, is there?

“A. There would have to be a tear in order to release the fragment.

“Q. Let me ask you this, Doctor, is there any evidence of tearing of the periosteum on this film, that is demonstrated as I am holding it in my hand? [163] “A. No, there isn’t.

“Q. All right.

“A. No evidence on the film.

“Q. Okay. Now, there wasn’t any evidence of any swelling or edema when you examined this x-ray—when you caused this x-ray to be taken in November of 1953, isn’t that true, Doctor?

“A. There was swelling.

“Q. This patient’s left arm, at the wrist, was ever casted, was it?

“A. It was immobilized.

“Q. But it was never casted, was it?

“A. No.

“Q. Did you use an Ace bandage on that, Doctor?

“A. It was immobilized with a splint and adhesive tape.

“Q. Now, on the lateral film, on Plaintiff’s Ex-

(Deposition of Dr. Charles J. Smalley.)

hibit S-1, for identification, there is no evidence of bone pathology on that film, is there, Doctor?

"A. No, there isn't.

"Q. On the lateral view? "A. No.

"Q. This film that was taken under your direction and supervision was taken in November of 1953, and there was no film taken thereafter, was there? "A. Correct. [164]

"Q. So that you don't know, as a matter of fact, presently, Doctor, do you, whether or not that very small chip fracture of the styloid process has dissolved? "A. No.

"Q. It might have dissolved, isn't that true?

"A. I don't know.

"Q. All right. Doctor, you are a general practitioner, isn't that true? "A. Correct.

"Q. You are not a specialist in psychiatry, are you?

"A. I studied psychiatry and consider myself capable of handling psychiatric problems in the usual run.

"Q. You are not a specialist in psychiatry, though?

"A. I haven't passed the Psychiatric Certification Board.

"Q. You have testified, Doctor, that there was evidence of arthritis in the right knee, is that correct? "A. Correct.

"Q. Now, you have not had any x-rays taken of that right leg or knee of Barbara Arramone of recent date, have you? "A. No.

Deposition of Dr. Charles J. Smalley.)

"Q. Did you ever take an x-ray of Barbara Arramone's right leg at the knee?

"A. I had an x-ray report.

"Q. No. Did you? Just answer, please.

"A. I didn't, no. [165]

"Q. All right. And the best evidence of whether or not there are arthritic changes or evidence of arthritic pathology in bone anatomy is an x-ray film, isn't that true, Doctor?

"A. It is not true.

"Q. Well, you will see arthritic spurs on the x-ray film if they are arthritic, isn't that true?

"A. Arthritic spurs can be detected on an x-ray film, but it isn't early.

"Q. Well, arthritis is a systemic condition, isn't that it, in its origin?

"A. No, not always.

"Q. How many types of arthritis are there, Doctor?

"A. There are many types of arthritis, infectious arthritis, osteoarthritis, which would be hyperrophic and atrophic, and traumatic arthritis, which is due to an injury. The classification has been revised recently and is still being revised as a result of our newer approach.

"Q. So that your diagnosis is entirely based on your clinical examination of this patient, insofar as evidence of arthritic changes?

"A. Correct.

"Q. Doctor, did you perform any neurological tests on Barbara Arramone?

"A. No—yes, let me say; correct that. I exam-

(Deposition of Dr. Charles J. Smalley.)

ined her face and found she was unable to—— [166]

“Q. Just answer. Yes, you did, is that correct?

“A. Yes.

“Q. And what tests of a neurological nature did you conduct? Name them.

“A. The test of the use of the muscle; no——

“Q. Did you perform—I am sorry.

“A. ——no electrical tests were made.

“Q. Did you perform a Romberg test?

“A. Yes, sir.

“Q. And when did you perform a Romberg test?

“A. During the course of her examination.

“Q. What is a Romberg test?

“A. Romberg test? Having the patient standing on the floor to see whether she is weaving.

“Q. You don't have your office cards with you insofar as those tests that you made?

“A. No, I don't.

“Q. You are relying entirely on memory, is that correct?

“A. That is correct. She was—should I——

“Q. If it is in an explanation to your answer,—— “A. No.

“Q. By all means proceed, Doctor.

“A. Excuse me.

“Q. Barbara Arramone is right-handed, isn't she? “A. Correct. [167]

“Q. The injury that she had, of this minor chip of the styloid process, is in the left extremity, or the left arm? “A. Right.

“Q. Now, Doctor, you mentioned something

(Deposition of Dr. Charles J. Smalley.)

about headaches, and that is a subjective complaint, wholly within the control of the patient, isn't that true? In other words, I might tell you that I have a headache right now and you couldn't tell whether I have one, or not, is that correct?

"A. That is correct, but I don't say it is within the control, the patient's control, to produce or dispense with a headache.

"Q. Well, what I mean is this, insofar as control,— "A. Maybe I misunderstood.

"Q. —I mean that the patient might tell you that she has a headache and you couldn't tell whether or not she was telling the truth, isn't that true? "A. Right.

"Q. Barbara Arramone wasn't placed in the hospital by you when she came to your office for the first time in October of 1953, was she?

"A. No.

"Q. She was entirely ambulatory and she walked into your office upon the first occasion you saw her, is that correct? "A. Yes. [168]

"Q. An excellent result was obtained insofar as this injury to the wrist, in view of the fact that you did not take additional x-rays; I take it that is true, isn't it, Doctor? "A. No, it is not true.

"Q. Well, if you didn't obtain an excellent result, you would have taken another x-ray in order to correct anything?

"A. Absorption of bone requires considerable time and further x-ray studies were advised and was anticipated.

(Deposition of Dr. Charles J. Smalley.)

“Q. But no x-ray has been taken for a period of almost, well, for one year, as a matter of fact, isn’t that true?

“A. Lacking one day. By way of explanation——

“Q. If it is an explanation to your answer, please proceed.

“A. She has been busy with attending a plastic surgeon, or consulting plastic surgeons, and has kind of neglected some of the less important complaints.

“Q. Doctor, is that in answer to the prior question, that last statement that you gave?

“A. In answer to the question?

“Q. Yes.

“A. Yes, by way of explanation.

“Q. Doctor, you are acquainted and know of Dr. Paul Magnuson? “A. Yes. [169]

“Q. An eminent and outstanding orthopedic surgeon in the Middle West? “A. Yes, sir.

“Q. If I were to tell you that he states that a fracture of a styloid process of an ulnar bone resolves itself in very little disability, would you say that Dr. Magnuson is wrong in that regard?

“A. It would depend on the type of the fracture.

“Q. I am speaking of a chip fracture of the styloid process of the ulnar bone.

“A. I would disagree in that it is never always true.

“Q. All right. I believe you mentioned that there was no evidence of any muscle, nerve or tissue dam-

(Deposition of Dr. Charles J. Smalley.)

age within the area of the radius and the ulna when you examined Barbara Arramone and examined the x-ray film?

“A. There is no x-ray evidence of soft tissue damage.

“Q. The extent of your professional services within the past twelve months, during which time you have seen Barbara Arramone approximately once each month after December of 1953, consisted of what type of treatment?

“A. The treatment consisted of examination, repetition of blood counts to check on treatment, changing of medication in an attempt to relieve the headaches; also, I spent a good deal of time counselling with her relative to this mental problem, this instability that she was exhibiting, and [170] trying to encourage her as to the results, not to be afraid, and she should get out among people, and even encouraged her to obtain a position.

“Q. Now, you mentioned that Barbara Arramone is eighteen years of age presently, is that correct? “A. I believe that is correct.

“Q. Was she a student in high school during the time you attended and treated her?

“A. Well, she had graduated from high school.

“Q. As of when, Doctor? Your best——

“A. As of the previous June, of—June of '53.

“Q. By the way, you did not perform any spinal tap here, did you? “A. No.

“Q. To determine whether or not there was any brain damage?

(Deposition of Dr. Charles J. Smalley.)

"A. It was too late after the original accident. It wouldn't have shown any positive test, if even there had been.

"Q. There was no evidence of bony pathology in the skull plates that you took? "A. Correct.

Mr. Pause: No other questions."

Mr. Fitzwilliam: Now, if your Honor please, I would like very well if we may have a view box to put this X-ray on for the jury to see. [171]

(The x-ray referred to was placed in a view box.)

Mr. Fitzwilliam: You might explain that this is what is referred to as the lateral view in the X-ray.

Mr. Stutsman: May I explain that to the jury?

This view here, which will be stipulated is called an antero-posterior view, that is, turned to the back with the hand down, and this view here would be the lateral, that is the side view, and the circle here is the circle that the doctor circled where the bony pathology is, and we will stipulate with counsel that that is the chip fracture here (indicating).

Mr. Fitzwilliam: That that is the chip apparently that he referred to, right there (indicating).

Mr. Stutsman: In here, what is called the styloid process of the ulnar bone, is that right?

Mr. Fitzwilliam: Yes. I think for the clarification of the jury we might also stipulate that the doctor says that nothing shows in the later view.

Mr. Stutsman: In the lateral view, this view, looking in this direction, it isn't picked up in that view. Thank you. [172]

Mr. Nagel: (Reading.)

“Q. Dr. Smalley, did you have occasion to——”

The Court: I think perhaps we might take the morning recess. You are starting a new deposition?

Mr. Pacht: That is right.

The Court: Ladies and gentlemen of the jury, we will take the morning recess. Remember the admonition of the Court heretofore given you.

(Recess.)

The Court: The jurors are all present. You may proceed.

Mr. Fitzwilliam: Your Honor, it is agreeable with counsel, and with your Honor's permission I would like to call Dr. Petzold now because of arrangements previously——

The Court: You may do so.

Mr. Fitzwilliam: Dr. Petzold, will you take the stand, please? [173]

DR. HAROLD V. PETZOLD

Called as a witness for the defendant out of order, sworn:

Direct Examination

Mr. Fitzwilliam: Q. Your name is Dr. Harold Petzold? A. That is correct.

Q. What is your business or profession?

A. Neurology.

Q. And are you a duly licensed physician and surgeon?

A. I don't do any surgery, just medical neurology.

(Testimony of Dr. Harold V. Petzold.)

Q. You are licensed to practice neurology in the State of California? A. I am.

Q. And would you tell us something, doctor, about your training, beginning with your schooling, when and where?

A. I took my final medical degree in the University of Tennessee School of Medicine in 1945, I interned at Binghamton City Hospital of New York, I was then in the Army Service for two years, and then returned to San Francisco where I was four years in neurology, resident work.

Q. And how long have you been practicing in Sacramento, Doctor? A. Three years.

Q. Are you a member of any neurological associations or societies? A. Most all of them.

Q. Are you a member of the American Board of Neurologists? [174] A. Yes, sir, I am.

Q. Doctor, at my request did you make an examination last Thursday of Miss Barbara Arramone? A. Yes, I did.

Q. And was that examination a complete neurological examination?

A. It was a neurological examination.

Q. And did it include an examination of the nerves? A. Yes.

Q. All right, and that would be—would you describe what type of nerves, sensory and so forth?

A. Well, the neurological examination was rather extensive. It involves not only a historical description of the symptoms but also an objective

Testimony of Dr. Harold V. Petzold.)

valuation of the patient in terms of what neurological defects may or may not be present.

Q. Now, doctor, you also examined the reflexes?

A. That is part of the neurological examination.

Q. Yes. And tell us what you found regarding the reflexes as far as Barbara Arramone is concerned?

A. I found no abnormality of either the deep reflexes of the extremities or the superficial reflexes of the abdomen.

Q. Now, in addition to your examination that you told us about, of the nerves and the reflexes and so forth, did you do a Romberg?

A. Yes, I did. [175]

Q. Make a Romberg test. And what is that, doctor?

A. The Romberg is essentially a sensory test. It is tested by having the individual to stand heels and toes close together, putting them on a small base, having them to close their eyes and then watching for any faultiness of movement or unusual sway or falling, even.

Q. And what did you find from your test in that regard as far as Miss Arramone is concerned?

A. There was mild swaying, but I did not feel that it was significant of any neurological disorder.

Q. Is that something that you might find, a mild swaying with anyone, without any neurological significance? A. Yes, it is.

Q. Now, did you, in the course of your examina-

(Testimony of Dr. Harold V. Petzold.)

tion, make any examination of Miss Arramone's gait?

A. Yes, I observed her gait from time to time in examining the situation.

Q. And did you find anything abnormal about her gait? A. No, I did not.

Q. Was she well oriented?

A. Yes, she was.

Q. All right. Now, doctor, I am trying to shorten this and I am going to exclude for the moment from this question the left side of Miss Arramone's face and I am going to ask you aside from that area, in your examination, your neurological [176] examination, did you find any objective evidence of any neurological disorder?

A. No, I did not. The examination was essentially within the normal limits.

Q. Now going to the left side of the face, what did you find there, doctor?

A. Well, of course there were a number of healed scars of previous lacerations that were observed crossing the face and the forehead and the nose. So far as the neurological examination was concerned, there were patchy areas of diminished pain sensation over the left side of the face and occasionally a random irregular muscular twitch would be noted to play over the left side of the face.

Q. All right. And that, of course, in your examination was an objective finding of some—that was an objective finding that you made?

A. Yes.

(Testimony of Dr. Harold V. Petzold.)

Q. And to understand your testimony, then, aside from that you found nothing abnormal or neurological? A. I did not find anything.

Q. All right. Now, did your examination, doctor—one point here—did it include, your examination of the nerves, the—just one moment, please—the ocular nerves—the ocular nerve, the olfactory nerve, did it include those?

A. Yes, all twelve cranial nerves. [177]

Q. All right. That is as far as the neurological examination goes as far as the testing of the nerves is concerned, those twelve, is that right?

A. We examined all twelve nerves.

Q. All right. And you have different methods of examining each nerve, is that right.

Q. Without going into detail. All right. Now, doctor, did you examine an electroencephalogram chart taken upon the person of Miss Arramone?

A. I examined that record as a process of reading all records that were taken here in Sacramento.

Q. Is there anyone else in Sacramento that makes those readings other than yourself?

A. They do not make them as a part of the examinations coming through those laboratories, they may be able to read them, but they don't do them on the basis of being considered an electroencephalographer, set up to read those records.

Q. In other words, you are the only one in Sacramento that makes those readings?

A. That is correct.

Q. Now, in that regard, doctor, would you tell

(Testimony of Dr. Harold V. Petzold.)

us what is this electroencephalogram? Would you give us something about it?

A. The best way to explain it is to compare it with heart waves. Most people are familiar with the electrocardiogram, [178] which traces certain electric properties of the heartbeat on a photographic piece of paper. The electroencephalogram, abbreviated as an "E.E.G.," is essentially the same type of test. It is an arrangement of the electrical potentials that are given off by a normal functioning brain.

Q. Now, doctor, is it ever in itself a complete diagnosis?

A. No, it is like any other laboratory test, it must be correlated with the clinical history and various findings that may be found on examination.

Q. Yes. In other words, at the most it is only a part of the examination to come to a diagnosis?

A. It is a part of an examination.

Q. And, doctor, what does this chart read that you saw?

A. An interpretation of the record as a whole was to the effect that it was a diffused mildly abnormal record.

Q. Mildly abnormal? A. That is correct.

Q. And, doctor, is that the type of record that you might obtain on an electroencephalogram on many occasions from people who haven't been involved in an accident or trauma?

A. Yes, this can be considered such. We cannot come to any strong fast conclusions regarding the

(Testimony of Dr. Harold V. Petzold.)

findings in any one E.E.G. Again it must be correlated with the history and findings.

Q. All right. Now, doctor, correlating that graph with [179] your examination of Miss Arramone, and your obtaining of a history, was there any history of any convulsions?

A. I did not get any history of any convulsions.

Q. Correlating that graph, that gram, that mildly diffused pattern, with your examination clinically, all of the things we haven't gone into in great detail in this neurological examination, is there in your opinion anything alarming about the encephalogram?

A. No, I wouldn't say it is alarming.

Q. Is it possible that the same encephalogram two years ago may have revealed the same mildly diffused pattern?

A. It is possible. There is no way of knowing that, unfortunately.

Q. An encephalogram is merely a part, as I understand it, of an examination?

A. That is correct.

Q. Now, did Miss Arramone give you the complaint of headache? A. Yes, she did.

Q. And is that entirely a subjective complaint, Doctor?

A. Headache like any and all other pain is subjective.

Q. All right. And if I were to tell you, doctor, that according to hospital records Miss Arramone, on the day following this accident was alert, and

(Testimony of Dr. Harold V. Petzold.)

on the day following that she was alert, and I think on the day following the accident was visited by an uncle and was not disturbed about it, and [180] taking that history together with your findings at the time of your examination is there anything in your opinion to account for those headaches?

A. No, sir, other than accept the history of head trauma is all that we have to go by.

Q. With that history, doctor, would you consider it unusual that headaches would persist until this time?

A. Yes. As a general rule, the post traumatic headache tends to gradually clear over a period of time, which is quite variable. Usually in a year, year and a half, we expect usually to see them leave.

Q. Yes. And, doctor, I should have added this: If I told you that X-ray pictures of Miss Arramone's skull were entirely negative as to any fracture, would that be in any way more reassuring as to the probability of the headaches ceasing?

A. Well, you can't correlate headache—fracture. It would be reassuring in that we have some idea of what happened to the skull as a result of trauma. Usually we are not too much concerned with fracture unless it is of a particular type, depressed or crossing an area in which a blood vessel may pass, thereby lacerating a blood vessel.

Q. Can your headaches be entirely on an emotional basis, doctor?

Mr. Stutsman: I didn't hear that.

Testimony of Dr. Harold V. Petzold.)

Mr. Fitzwilliam: Can headaches be on an entirely emotional basis? [181]

A. They have been claimed to be. Each case must be evaluated in its own rights.

Q. Are there many causes for headaches?

A. Many causes for headaches.

Mr. Fitzwilliam: That is all.

Cross Examination

Mr. Stutsman: Pardon me, your Honor, is it my correct understanding that this testimony is offered only with respect to the Arramone case?

Mr. Fitzwilliam: Oh, yes.

Mr. Stutsman: Very well. Thank you.

Q. Doctor, you did not give us the benefit of your history in this case. Will you give us that now? All you have talked about is subjective complaints.

A. The only thing I talked about is what I was asked. If you desire that I will give you the history.

Q. Will you give us it, please?

A. The history ran something as follows: On the evening or the night of August 27, 1953, the patient was involved in an auto accident somewhere in the environs of Stockton. As a consequence of the auto accident her face and head were forcibly thrust toward the windshield, and as a consequence of that she sustained multiple lacerations and apparently was unconscious for an undetermined period of time. [182] My time was that she was unconscious for two days.

(Testimony of Dr. Harold V. Petzold.)

She was initially hospitalized at the San Joaquin General Hospital and after being there for some four or five days was transferred to the St. Agnes Hospital in Fresno, I believe.

The extent of injuries, so far as I was able to determine, consisted of multiple lacerations of the face, forehead; she sustained a fracture of the right wrist, I believe—I may be incorrect in that, it is one of the wrists.

Mr. Fitzwilliam: May I interrupt, your Honor? I take it that the doctor is now repeating the history as he received it.

Mr. Stutsman: That is right.

Mr. Fitzwilliam: This is the history?

A. Yes. And there was also a laceration of the right knee. Aside from that there seems to be no other pertinent history of any serious injury.

As I clearly noted, the patient subsequently had plastic surgical repair by a plastic surgeon in Chicago for her facial lacerations.

Mr. Stutsman: Any further history, doctor?

A. That is essentially the history of the accident.

Q. How about complaints,—any history of complaints that she made from the time of the accident to the time you saw her?

A. The patient complained of headaches as we have talked of, generalized for the most part, lasting from two or three hours to maybe the entire day, more or less continuous up to the present time.

She also complained of episodes of dizziness which would occur three or four times a week, very

Testimony of Dr. Harold V. Petzold.)

transient, not indicated to be of any true vertiginous origin.

More recently she has complained of a sense of lacking out, lasting for a split second, as she put it. What this actually amounted to, I could not say. Another complaint was within the past six or seven months waking up with a peculiar sensation as if a cat were purring on her throat. I could not comprehend that.

Q. Is that substantially the complaints that she made, doctor?

A. That is essentially what she gave me.

Q. And you had no history in your consideration and examination of fatigability?

A. No, that was not mentioned to me.

Q. And you had no complaint in your history about nervousness?

A. Not specifically. It was obvious the girl was depressed because of her facial scars.

Q. But you had no history of her conduct as to being nervous between the accident to the present time?
A. She never alluded to such. [184]

Q. So you had no knowledge of that?

A. No.

Q. You had no knowledge of her being irritable?

A. No.

Q. And you didn't have any history of her losing some twenty-some pounds weight since the accident?

A. Yes, she did mention that she had lost some weight.

Q. Doctor, if you had those additional com-

(Testimony of Dr. Harold V. Petzold.)

plaints they would be significant, wouldn't they, in your evaluation?

A. As a total picture. Probably pertaining to the objective neurological status is another thing.

Q. But I mean, doctor, you evaluate them certainly by clinical signs as well as these neurological electroencephalograms, do you not?

A. Yes, we do.

Q. In other words, a neurological examination also has its limitations, doesn't it, Doctor?

A. Very definitely.

Q. There are large areas of the brain that it doesn't reach, isn't that right?

A. Well, that covers a lot of discussion.

Q. Well, you have the silent areas of the brain that in the medical profession you people don't know what they are for, do you?

A. Well, in answering such a question as that one would have [185] to qualify and state specifically what is indicated and what area is silent, to what degree they are silent, or what.

Q. True. But the neurological examination does not reach them, does it, doctor?

A. I don't believe that question can rightfully be answered.

Q. Is it difficult to answer, doctor, or can't be?

A. I would preface that by the fact that we ought to know what was specifically in mind regarding silent areas.

Q. Well, there are areas of the brain that take

(Testimony of Dr. Harold V. Petzold.)

care of perception, memory. Those are not reached by neurological examination?

A. Areas of the brain of memory?

Q. And perception?

A. We don't know where memory is stored. It is probably stored all over the brain.

Q. That is right. And if a brain had a diffused injury it could disturb those areas, couldn't it, and not show up in the neurological?

A. It is possible, but again all this must be qualified.

Q. Doctor, isn't it very uncertain in medicine?

A. Will you repeat that?

Q. Isn't it very uncertain in medicine.

Mr. Fitzwilliam: I didn't get the question myself.

Mr. Stutsman: Uncertain. [186]

Mr. Fitzwilliam: Isn't what uncertain.

Mr. Stutsman: Well, trying to evaluate that.

A. We have different techniques with which we do try to evaluate those things.

Q. Doctor, you agree with me that the practice of medicine is an art more than a science, or it is an art and a science, both?

A. I think it is a combination of both.

Q. That is why you doctors study so much, so you can interpret these things, isn't that right?

A. Yes, sir.

Q. And with all that study you have your limitations, don't you, Doctor?

A. That is right.

(Testimony of Dr. Harold V. Petzold.)

Q. In medicine a lot of things are very mysterious, doctor, aren't they? A. Yes, indeed.

Q. And that is why we have our human limitations, isn't that right, doctor?

A. Yes, we have our limitations.

Q. It appears to us, does it not, so far, that many things are given to us to know, isn't that right? A. I beg your pardon?

Q. I say also at the present time in medicine there are many things about the functions of the human body that are [187] not given to us to know, isn't that right? A. That is correct.

Q. Now, doctor, Mr. Fitzwilliam mentioned about these subjective complaints and that they are solely in the control of the patient. Do you recall that? A. Yes.

Q. Did anything occur in your examination or did anything come to your attention that you had cause to disbelieve Barbara Arramone in anything she told you? A. No, I had not.

Q. And you didn't get the various other symptoms that I have related in addition to headache and dizziness, isn't that right?

A. No, she did not give them to me.

Q. Now, doctor, a concussion of the brain, can you give us a definition of that, please?

A. By a concussion of the brain it is implied that some force has been applied to the head which may consist of acceleration or deceleration of the head, moving or stopped, in which the brain is

(Testimony of Dr. Harold V. Petzold.)

thrown about in its cranial cavity and shakes up the nerves like you shake up a bag of marbles.

Q. In other words, the brain is a sort of jelly substance movable inside the skull, isn't that right?

A. That is correct. There are degrees of concussion.

Q. And there is a fluid substance that surrounds the brain, [188] in between the brain the skull, isn't that right?

A. That is correct, yes.

Q. Now, you are aware, from your examination, of the direction of force that hit her head, are you not, from looking at the wounds?

A. That is right.

Q. It was more or less her right face forward, wasn't it?

A. That is the way it appeared.

Q. And were you aware also that she struck the windshield so hard that her head went through the glass?

A. I did not know it went through the glass.

Q. But that would be a significant thing to know as to the force of the blow, would it not, doctor?

A. Yes, I think it would.

Q. Now when a head is thrown violently against the glass to the extent that it will knock a hole through the glass, the skull, the outside part of the head, is suddenly decelerated, isn't that right?

A. The head is decelerated.

Q. And then the brain keeps coming, isn't that right?

A. That is correct.

Q. And incidentally, in that area of the brain,

(Testimony of Dr. Harold V. Petzold.)

the forepart of the brain, you have some irregular areas of bone right behind the eyes, doctor?

A. They are pretty smooth. [189]

Q. Aren't they those wings where the temple lobes fit into the skull?

A. And they are there for a reason, they protect the brain.

Q. And there are ridges forward, aren't they?

A. That is for the convolutions of the brain to fit in.

Q. And there are those two wings of the bone across behind the eyes, the sphenoid bone, or something?

A. The wings of the sphenoid.

Q. And they come out, don't they, doctor?

A. That is correct.

Q. And there are edges across there?

A. There are smooth edges.

Q. But also the bone part is very thin where they come to an edge, isn't that right?

A. Relatively thin. It varies.

Q. And it goes back about probably a half inch, doesn't it?

A. It makes a slight overlying shelf, if you will.

Q. And that is where the brain would hit as it travels forward, wouldn't it?

A. It travels as a mass, the whole brain goes forward.

Q. True, but the part that first hits hits those rough edges, isn't that right, doctor?

A. Well, I don't know.

estimony of Dr. Harold V. Petzold.)

Q. Wouldn't the brain be so large it would have hit them?

A. The brain is moving as a mass, and it is held in its [190] position by various contiguous structures, such as the falx, which must be taken into account, that holds the brain in place.

Q. Now, doctor, is what we have just talked here about, this force being applied as we have described, that consistent with concussion of the brain?

A. Oh, yes, I think that this patient had a concussion of the brain, there is no doubt of that.

Q. And don't you think the electroencephalogram is also consistent with that?

A. I don't believe so.

Q. It isn't consistent with it?

A. I don't believe you could make that statement, no.

Q. Is it inconsistent with it?

A. No, I do not say that you could make that statement either.

Q. It shows abnormality and diffuse injury, doesn't it?

A. But it does not say due to what.

Q. No, but it is significant as a diagnostic aid, isn't it, doctor?

A. It is an aid.

Q. True. And it certainly isn't contrary to a concussion, is it?

A. No, it is not contrary.

Q. Doctor, also it is consistent with a contusion of the [191] brain, or bruising, isn't it, doctor?

A. No, it is not that.

(Testimony of Dr. Harold V. Petzold.)

Q. Doctor, a concussion of the brain is a brain injury, isn't it?

A. It is a form of a brain injury, yes.

Q. Doctor, if you agree that Barbara had a concussion of the brain and if you take these symptoms that have been related as true, then she has at the present time a post concussion syndrome, as they call it in medicine, wouldn't you say?

A. I believe that her symptoms in the aggregate would add to that.

Q. And it is organic brain injury, isn't it?

A. Yes, it is attributed to that.

Q. And, doctor, I have your report here. This is your signature, is it not? A. Yes, it is.

Q. And a part of this was not stated. Is this the true diagnosis of the electroencephalogram: Diffused abnormal E.E.G., of mild degree, compatible with a convulsive susceptibility?

A. That is correct.

Q. What does compatible with a convulsive susceptibility mean, doctor?

A. That would mean that if clinically this patient had complained of having convulsions, the record would be compatible [192] with that because it shows paroxysmal dysrhythmia.

Q. Doctor, in convulsive conditions you have the petit mal and grand mal, isn't that right?

A. That is correct.

Q. And petit mal would be of very short duration and probably very minor, isn't that right?

A. Petit mal is an unequivocal diagnosis by the

Testimony of Dr. Harold V. Petzold.)

E.E.G. We know that, and it is the only one that we can diagnose specifically by the E.E.G.

Q. A blackout would be a petit mal, wouldn't it?

A. No, it would not be necessarily.

Q. It could be, couldn't it, doctor?

A. It could be anything. It could be a disturbance of the circulation.

Q. Now, if it is true that Barbara had blackouts, that would be consistent with this electroencephalogram, wouldn't it, doctor?

A. According to the history of development a month ago, one would try to tie in clinically the significance of this.

Q. It would be significant, wouldn't it, doctor?

A. You would have to take that into account.

Q. That is right. In fact, doctor, effects of these brain injuries come on years later, don't they?

A. Some feel that the span of time is anywhere from a year to ten years. We can't always prove those things.

Q. So Barbara is in that span, isn't she, right now? [193]

A. I would say so.

Q. Now, doctor, on Barbara Arramone, you were primarily concerned on a neurological basis, isn't that right?

A. That is correct.

Q. You are not a psychiatrist?

A. No, I am not.

Q. You made no attempt to evaluate her on a psychiatric basis?

A. None other than to give her some assurance

(Testimony of Dr. Harold V. Petzold.)

because of her indicated emotional instability because of her scars.

Q. You felt that they were indicated, that is why you gave that to her?

A. Well, I don't like to see them cry in the office.

Q. What is that?

A. I don't like to see them cry in the office.

Q. Is that the reason you gave it to her, not because she needed reassurance?

A. If they don't need it we certainly don't say anything to them.

Q. Well, doctor, as a doctor of medicine wouldn't you say that a young girl suffering disfiguring scars as you saw them, it would have an emotional effect on them?

A. I believe that is correct.

Q. In fact, doctor, in medicine isn't it recognized that facial scarring of people causes various types of anti-social behavior? [194]

Mr. Fitzwilliam: Your Honor please, I am going to object to this. Counsel has already elicited from the doctor——

Mr. Stutsman: I will withdraw the question. He said he gave a little reassurance. I will withdraw that.

Q. Doctor, a little further on that basis could I ask you this: That you have not even, so there will be no doubt about it, attempted to give us any opinion relative to the emotional disturbance result-

(Testimony of Dr. Harold V. Petzold.)

ing from the psychic shock initially when the injury occurred or the disturbance which would necessarily follow, if it did follow, from the disfigurement afterwards? You haven't given any opinion, have you?

A. Now, that doesn't fall within my realm.

Q. So the person best able to give such an opinion would be one trained in psychiatry, would it not, doctor?

A. That is correct.

Q. But in medicine generally, even though it is not in your realm, you do recognize psychic injury, don't you, doctor?

A. Yes, I do.

Mr. Stutsman: Doctor, I want to thank you very kindly.

Redirect Examination

Mr. Fitzwilliam: Q. Just one question, doctor: There was a mention of petit mal and grand mal, I believe. Petit mal, as I understand it, to try to shorten this, is the [195] shorter periods of convulsion?

A. Yes. Petit mal is a very short transient loss of consciousness, varying anywhere from 1 second to probably 30 seconds, not manifested by any tongue biting, movements of extremities, and so on.

Q. And that is the one type of diagnosis that you say you can depend on in the encephalogram examination?

A. So far as the electroencephalogram is concerned, the wave configuration that is seen in petit mal is the only one that we consider diagnostic.

(Testimony of Dr. Harold V. Petzold.)

Q. And was that type of wave present on this chart?

A. No, this patient did not have petit mal activity.

Mr. Fitzwilliam: All right, thank you very much.

Recross Examination

Mr. Stutsman: Q. Doctor, is it a fact that many known epileptics have a completely normal reading of the electroencephalogram?

A. 15 to 20 per cent of known epileptics will show a normal record.

Q. And incidentally, doctor, how much time did you have with Barbara, that is, taking the history and everything all together?

A. Better than an hour, an hour and ten minutes, perhaps.

Q. And that is the only time you ever saw her?

A. Yes. [196]

Redirect Examination

By Mr. Fitzwilliam:

Q. One question on that, I am sorry. Could you accomplish any more in the way of examination, doctor, by taking any more time?

A. Not so far as the objective neurological examination is concerned. Either the findings are there or they aren't.

Mr. Fitzwilliam: I see. Thank you very much.

Mr. Stutsman: Thank you, Doctor. [197]

Thursday, April 7, 1955, 1:30 p.m.

The Court: The jurors are all present. You may proceed.

Mr. Nagel: Barbara.

BARBARA ARRAMONE

Plaintiff herein, called as a witness in her own behalf, sworn.

Direct Examination

Mr. Nagel: Q. We are going to ask that you speak up loud enough so we can hear you, please. Your name is Barbara Arramone, is that correct?

A. Yes.

Q. You are now 19 years of age?

A. Yes.

Q. And you were 17 at the time you were involved in the collision, is that right?

A. That is right.

Q. You are the daughter of Mary Arramone, who is sitting in the back room here?

A. Yes.

Q. Did your mother give the correct date of your birth, Barbara?

A. I wasn't here then.

Q. When were you born? A. 1935.

Q. And on what day and month? [198]

A. October 20, 1935.

Q. That makes you 19 today, is that correct?

A. Yes.

Q. Barbara, is it true that on August 27, 1953 you had come out to California along with your

(Testimony of Barbara Arramone.)

uncle and aunt, Mr. and Mrs. Brunkala on vacation? A. That is right.

Q. And you left Fresno and was proceeding along the highway to stop at Sacramento and then proceed further on home, is that correct?

A. Yes.

Q. And is it true that you were sitting in the front of the automobile and to the right?

A. Yes.

Q. And right next to your aunt, Mrs. Brunkala, is that right? A. Yes.

Q. Barbara, do you remember anything about the collision itself? A. No.

Q. Were you awake or were you asleep prior to the collision? A. I was asleep.

Q. What is the first distinct recollection you have, Barbara, after the collision took place?

A. When I woke up in the hospital, the nurse was in the [199] room.

Q. You are going to have to speak up a little bit louder, Barbara, please. You woke up in the hospital and what?

A. The nurse was talking to me.

Q. Do you now know how long that was after the collision took place? A. Yes.

Q. How long was that after the collision took place? A. Three days.

Q. After your stay in the San Joaquin Hospital you were then transferred by ambulance to St. Agnes Hospital in Fresno, is that right?

Testimony of Barbara Arramone.)

Q. And you stayed there for some days and then moved out to your uncle's home?

A. That is right.

Q. That is Mr. and Mrs. Hinkle, is that correct?

A. Yes.

Q. And then some time after that you left for home, is that correct, Barbara? A. Yes.

Q. With your mother? A. Yes.

Q. And did you see Dr. Pearson in Fresno?

A. Yes, I did.

Q. And Dr. John Wilde? [200]

A. Yes.

Q. And Dr. Wolf? A. Yes.

Q. Barbara, did you lose any teeth in this collision? A. Yes, I did, I lost four teeth.

Q. Can you point them out to us just generally? Were they on the left side of your mouth or right?

A. On the left side.

Q. How many were lost from the top and how many below?

A. Well, at the time of the accident the two top teeth got knocked out, and one on the bottom was cracked and pushed backwards.

Q. And were those later extracted?

A. Yes, sir.

Q. Were any of your other teeth knocked loose?

A. I had two teeth chipped on the right side, and some teeth jarred loose on the left side, upper and lower.

Q. And did Dr. Johnson manage to save those teeth that were loose?

(Testimony of Barbara Arramone.)

Q. Were you present at the time we took Dr. Johnson's deposition back in Chicago, Barbara?

A. Yes, sir.

Q. And did he at that time fully relate the number of teeth that were repaired and capped and replaced?

A. Yes. [201]

Q. Now, I will ask you this, Barbara: The four teeth that you lost, did you have any cavities in any one of those four teeth prior to the time that you were involved in the collision?

A. No, not so far as I know.

Q. Now, Barbara, some time after you got back home you went back to high school, is that correct?

A. Yes, sir.

Q. And did you get your high school diploma?

A. Yes, I did.

Q. And some time after that did you start working?

A. Yes, I did.

Q. And that was for the telephone company, was it?

A. Yes.

Q. What kind of work did you do?

A. Well, I started out as a clerk-typist.

Q. A clerk-typist, is that correct?

A. Yes.

Q. And you worked some five and a half months, is that right?

A. Right.

Q. And you earned how much money?

A. About——

Q. Was it \$1200.00?

A. It was \$1200.00 for the five and a half months.

Testimony of Barbara Arramone.)

Q. Barbara, why did you terminate your employment after some [202] five and a half months?

A. Because of my ill health and because I——
(Witness weeps.)

Q. Well, Barbara, let me ask you this——

The Court: Do you feel all right, Barbara? We will take a recess at this time.

Ladies and gentlemen of the jury, we will stand in recess. You will remember the admonition of the Court heretofore given.

(Recess.)

The Court: The jurors are all present. You may proceed.

Mr. Nagel: Your Honor, we have no further questions of Barbara.

Cross Examination

Mr. Fitzwilliam: Q. Barbara, you are nervous in the witness stand, aren't you?

A. Yes, a little.

Q. Now, you don't have to worry about me. You remember you talked to me in my office last Thursday for oh, better than a half hour, with the court reporter there? A. Yes, sir.

Q. And we got along all right, didn't we?

A. Yes, sir.

Q. You didn't have any trouble. Barbara, I am going to ask you this: Do you remember what the seating arrangement was in the [203] rear seat of the automobile?

(Testimony of Barbara Arramone.)

A. Yes, sir. My girl friend was on the right hand side directly behind me, and little Jennifer was on the left hand side of the car in back of her father.

Q. Now you went to high school, back to high school, in October? A. That is right.

Q. All right. And then you went to work about March, was it, of last year? A. Yes.

Q. And what date was it you got of high school? Was it in February?

A. No, I think it was January 28th.

Q. January 28th. And when you left Fresno, Barbara, and went home, how did you go to the train? Did you walk or go by car?

A. No, my uncle drove me to the train.

Q. Your uncle took you to the train?

A. Yes.

Q. You don't have any trouble remembering those details about how they were seated in the rear seat of the car and about your uncle taking you to the train?

A. No, I can't forget about the seating arrangement because we always sit that way.

Q. And can you recall now the day that you graduated from [204] high school, January 28th?

A. I think it was the 28th.

Q. And you haven't had any plastic, any further plastic work done now since last October?

A. No.

Testimony of Barbara Arramone.)

Q. And you remember pretty well what Dr. Johnson said in his deposition about your teeth that were taken some seven or eight months ago?

A. I couldn't help to remember that, I was looking so much while the teeth were being fixed, I know in almost every detail.

Q. And Barbara, I assume that you have been nervous about this lawsuit, haven't you?

A. Somewhat, yes.

Mr. Fitzwilliam: I think that is all. Thank you.

A. You are welcome.

Mr. Nagel: No questions. Step down, Barbara.

Mr. Stutsman: May we have one second, for a conference, your Honor please?

The Court: You may.

Mr. Stutsman: We rest our case, if the Court please.

Mr. Pacht: The Plaintiff Brunkala rests.

The Court: All the Plaintiffs then rest?

Mr. Nagel: Yes, your Honor. [205]

[Endorsed]: Filed Dec. 5, 1955.

[Endorsed]: No. 14911. United States Court of Appeals for the Ninth Circuit. Barbara Arramone, minor, by and through her guardians ad litem, Dominick N. Arramone and Mary I. Arramone, Appellants, vs. John A. Prowse, as administrator of the Estate of Alvin Prowse, also known as Alvin

I. Prowse, deceased, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Northern Division.

Filed: October 24, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14911

BARBARA ARRAMONE, a minor, by and through
DOMINICK N. ARRAMONE, Etc., et al.,
Plaintiffs,

vs.

JOHN A. PROWSE, as Administrator of the
Estate of ALVIN PROWSE, Etc.,
Defendants.

ADOPTION OF DESIGNATION OF CON-
TENTS OF RECORD AND STATEMENT
OF POINTS ON APPEAL

Pursuant to Rule 17 (6) of the Rules of Practice of United States Court of Appeals for the Ninth Circuit, the Plaintiff and Appellant, Barbara Arramone, a minor by and through her Guardians

ad Litem, Dominick N. Arramone and Mary I. Arramone, hereby adopts the statement of points on appeal and designation of contents of record on appeal heretofore filed in the District Court of the United States in and for the Northern District of California, Northern Division, in proceeding No. 007 appearing in the typewritten transcript of record as the statement of points and the designation of contents of record on appeal as provided in said Rule 17 (6).

Dated: This 21st day of October, 1955.

STUTSMAN, HACKETT & NAGEL,

/s/ By J. J. NAGEL,

Attorneys for Plaintiff-Appellant,
Barbara Arramone

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 22, 1955. Paul P. O'Brien, Clerk.

